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ABSTRACT

This state plan explains how South Dakota intends to comply with Part B of the Individuals with Disabilities Education Act in the three fiscal years, 1996-1998. Federal requirements, state standards, the state plan, and specific policies and procedures are presented for each of the following provisions of the law: (1) Right to Education Policy Statement; (2) Full Educational Opportunities Goal; (3) Child Identification; (4) Individualized Education Program; (5) Procedural Safeguards; (6) Confidentiality; (7) Least Restrictive Environment; (8) Protection in Evaluation Procedures; (9) Responsibility of State Education Agency for Education Programs; (10) Comprehensive System of Personnel Development; (11) Participation of Private School Children; (12) Placement in Private Schools; (13) Recovery of Funds for Misclassified Children; (14) Notice and Opportunity for Hearing on Local Education Agency Application; (15) Annual Evaluation; (16) Policies and Procedures for Use of Part B Funds; (17) Description of Use of Part B Funds; (18) Additional Information on Direct Services; (19) Interagency Agreements; (20) Personnel Standards; and (21) Transition of Children from the Part H to Part B Program. Submission statements and certifications precede the information on substantive requirements. (DB)

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ED 391 296

STATE PLAN UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

FISCAL YEARS

1996 1997 1998

SOUTH DAKOTA

DEPARTMENT OF EDUCATION AND CULTURAL AFFAIRS

OFFICE OF SPECIAL EDUCATION

Submitted To:

United States Department of Education
Office of Special Education and Rehabilitative Services
Office of Special Education Programs
Washington, DC 20202

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STATE PLAN SUBMISSION

FISCAL YEARS 1996-1998

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PART I

SUBMISSION STATEMENT, CERTIFICATIONS, AND ASSURANCES

A. SUBMISSION STATEMENT

I, the undersigned authorized official of the State Educational Agency of the State of South Dakota, hereby submit the following State Plan under Part B of the Individuals with Disabilities Education Act (Act), which includes the Preschool Grants Application under section 619 of the Act, for Fiscal Years 1996, 1997, and 1998 (i.e., the grant periods beginning July 1, 1995, July 1, 1996, and July 1, 1997). Unless otherwise noted, the policies and procedures, and the certifications and assurances that are used throughout this submission, including references to Part B and to the State Plan, also apply to the Preschool Grants Application.

Signature of Authorized Official	Date

John A. Bonaiuto, Secretary
Type Name and Title

B. ASSURANCE STATEMENTS

The State of South Dakota makes the following assurances and provisions as required by Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411-1420):

1. In carrying out the requirements of 20 U.S.C. 1412, procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including individuals with disabilities and parents or guardians of children with disabilities (20 U.S.C. 1412(7)(A)).

2. Programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including subpart 2 of part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, under which there is specific authority for the provision of assistance for the education of children with disabilities, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all children with disabilities, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs (20 U.S.C. 1413(a)(2)).

3. Federal funds made available under the Act: (A) will not be commingled with State funds; and (B) will be so used as to supplement and increase the level of Federal, State, and local funds (including funds that are not under the control of State or local educational agencies) expended for special education and related services provided to children with disabilities and will in no case be used to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free public appropriate education, the Secretary may waive in part the requirement of this clause if the Secretary concurs with evidence provided by the State

(20 U.S.C. 1413(a)(9)(B) and 20 U.S.C. 1414(a)(2)(B)(ii)).

4. The State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in, or concerned with, the education of children with disabilities, including individuals with disabilities, teachers, parents or guardians of children with disabilities, State and local officials, and administrators of programs for children with disabilities, which:

   (A) Advises the State educational agency of unmet needs within the State in the education of children with disabilities;

   (B) Comments publicly on any rules or regulations proposed for issuance by the State regarding the education of children with disabilities, and the procedures for distribution of funds under the Act; and

   (C) Assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of his responsibilities under 20 U.S.C. 1418 (20 U.S.C. 1413(a)(12)).

5. The Individuals with Disabilities Education Act, as amended, will not be construed by the State to permit the State to reduce medical or other assistance available under, or to alter the eligibility requirements of, programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the provision of a free appropriate public education for children with disabilities within the State (20 U.S.C. 1413(e)).

6. The State has policies and procedures to ensure that any amendment to the plan submitted by the State shall be available to parents, guardians, and other members of the general public at least thirty days prior to the

date of submission of the amendment to the Secretary (20 U.S.C. 1412(2)(E)).

7. Control of funds provided and title to property derived therefrom, shall be in a public agency for uses and purposes provided, and a public agency will administer such funds and property; and fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the State, including any such funds paid by the State to local educational agencies and intermediate educational units (20 U.S.C. 1413(a)(6) and (10)).

8. The State will make such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part (20 U.S.C. 1413(a)(7)).

C. GENERAL STATE APPLICATION - EDGAR ASSURANCE

The State educational agency provides assurances that it will comply with the provisions contained in 34 CFR 76.101 and section 435 of the General Education Provisions Act.

D. CERTIFICATIONS REQUIRED BY EDGAR

In accordance with 34 CFR 76.104 the State educational agency assures that:

1. The Plan is submitted by the State agency that is eligible to submit the Plan.

2. The State agency has authority under State law to perform the functions of the State under the program.

3. The State legally may carry out each provision of the Plan.

4. All provisions of the Plan are consistent with State law.

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5. A State Officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the Plan.

6. The State Officer who submits this Plan, specified by title in the certification, has authority to submit the Plan.

7. The agency that submits the Plan has adopted or otherwise formally approved the Plan.

8. The Plan is the basis for State operation and administration of the program.

E. EXECUTIVE ORDER 12372

This State certifies that:

To the best of our knowledge and belief, data in this State Plan are true and correct, the document has been duly authorized by the governing body of the State education agency, and the State will comply with the attached assurances if the State Plan is approved.

The State Plan was submitted to the State's "single point of contact" under Executive Order 12372 on 10/10/94.
Month/Day/Year

F. PUBLIC PARTICIPATION (34 CFR 300.280-300.284 AND 34 CFR 76.101 OF THE EDGAR)

In meeting the general application requirements under Section 435 of the General Education Provisions Act, 20 U.S.C. §1232d, the state has provided reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by the program and other interested institutions, organizations, and individuals in the planning for the operation of the program, including:

(A) Consulting with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of the program plan required by Part B of IDEA;

(B) Publishing the proposed Plan, in a manner that will ensure circulation throughout the State at least sixty days prior to the date on which the Plan becomes effective, whichever is earlier, with an opportunity for public comments on the Plan to be accepted for at least thirty days;

(C) Holding public hearings on the proposed Plan; and,

(D) Providing an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with Part B of IDEA statute and regulations.

Copies of the state plan were mailed to the following groups requesting written comment on the plan: the State, ARC, TASH, CEC, DEC, CASE, and UAP; the Bureau of Indian Affairs; the Autism Society of South Dakota; Easter Seal; Parent Connection; South Dakota Advocacy; Parent To Parent; School Administrators of South Dakota; Schools for the Deaf and Visually Impaired; Head Start Association; Birth to Three Connections State Interagency Coordinating Council; Black Hills State University; Northern State University; University of South Dakota; Governor's Planning Council on Developmental Disabilities; Oglala Lakota College; and, South Dakota State University. The plan was also submitted to the South Dakota Advisory Panel for Special Education for comment.

On October 10, 1994, notice of the public hearings to be conducted on the plan was published in the six major newspapers of the state. Public hearings were conducted in Pierre, Sioux Falls, and Rapid City, South Dakota. The dates established for the hearings were enough in advance and at times and places to afford interested parties throughout the state a reasonable opportunity to participate. The notice was in sufficient detail to inform the general public about:

(1) The purpose and scope of the program plan and its relation to Part B,

(2) The availability of the program plan,

(3) The date, time and location of each public hearing,

(4) The procedures for submitting written comments about the plan, and,

(5) The timetable for developing the final plan and submitting it to the U.S. Secretary for approval.

The plan was available for written comment for a period of at least thirty (30) days following the date of the notice, October 27, 1994 through November 28, 1994.

Before adopting the state plan, office of special education staff reviewed and considered all public comments and where necessary, made modifications in the plan.

Information regarding the implementation of this requirement can be found in Appendix G, "Documentation of Public Participation."

After the U.S. Secretary of Education approves the program plan, the state shall give notice in the newspapers that the plan is approved. The notice shall name places throughout the state where the plan is available for access by any interested person.

G. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying, and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL "Disclosure Form to Report Lobbying" in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 -
A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -
A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employees assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employees in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the [illegible]

(2) Notify the employer in writing of his or her [illegible]
violation of a criminal drug statute occurring [illegible]
later than five calendar [illegible]

(e) Notify [illegible]
receiving [illegible]

Department [illegible]
3124, GSA [illegible]
[illegible]
each affected [illegible]

(f) Taking [illegible]
of receiving [illegible]
employee [illegible]

(1) Taking [illegible]
employee, up to and [illegible]
requirements of [illegible]

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South Dakota [illegible]
NAME OF APPLICANT

John A. Bonaiuto, [illegible]
PRINTED NAME AND TITLE

SIGNATURE
ED 80-0013

DATE

SUBMISSION DOCUMENT RELATED TO TIMELY REVIEW OF FY 1996-98 PART B STATE PLAN

H. **ASSURANCE - TIMELY REVIEW**

The State of South Dakota assures that the policies and procedures included in the State's FY 1996-98 State Plan under Part B of the Individuals with Disabilities Education Act (Part B), including amendments to the Plan that were added by Public Laws 101-476 and 102-119 (as required in OSEP Memorandum 93-3), have not changed since being approved by the Office of Special Education and Rehabilitative Services (OSERS) as part of the State's FY 1993-95 Part B State Plan. The State further assures that this completed submission document was included with the FY 1996-98 State Plan when made available to the general public for comment as part of the public participation requirements at §§300.280-300.284.

Signature Date

John A. Bonaiuto, Secretary of Education
Typed Name and Title of Authorized State Official

PART II

SUBSTANTIVE REQUIREMENTS

A. POLICIES, PROCEDURES, AND DESCRIPTIONS

The FY 1996-98 State Plan is a complete, intact document which includes all of the provisions listed below, including the State's policies and procedures. Policies and procedures include details of how requirements will be implemented and any other required information.

1. Right to Education Policy Statement (20 U.S.C. 1412(1); 1412(2)(B); and 1412(6); 34 CFR 300.121-300.122)

2. Full Educational Opportunities Goal (20 U.S.C. 1412(2)(A); 20 U.S.C. 1418(b)(6); 34 CFR 300.123-300.126)

3. Child Identification (20 U.S.C. 1412(2)(C); 34 CFR 300.128)

4. Individualized Education Program (20 U.S.C. 1412(4); 34 CFR 300.130)

5. Procedural Safeguards (20 U.S.C. 1412(5)(A); 34 CFR 300.131 and 300.136)

6. Confidentiality (20 U.S.C. 1412(2)(D); 1417(c); 34 CFR 300.129)

7. Least Restrictive Environment (20 U.S.C. 1412(5)(B); 34 CFR 300.132)

8. Protection in Evaluation Procedures (20 U.S.C. 1412(5)(C); 34 CFR 300.133)

9. Responsibility of SEA for Education Programs (20 U.S.C. 1412(6); 34 CFR 300.134)

10. Comprehensive System of Personnel Development (20 U.S.C. 1413(a)(3); 34 CFR 300.139)

11. Participation of Private School Children (20 U.S.C. 1413(a)(4)(A); 34 CFR 300.140; 34 CFR 76.650-76.662)

12. Placement in Private Schools (20 U.S.C. 1413(a)(4)(A); 34 CFR 300.140)

13. Recovery of Funds for Misclassified Children (20 U.S.C. 1413(a)(5); 34 CFR 300.141)

14. Notice and Opportunity for Hearing on LEA Application (20 U.S.C. 1413(a)(8); 34 CFR 300.144)

15. Annual Evaluation (20 U.S.C. 1413(a)(11); 34 CFR 300.146)

16. Policies and Procedures for Use of Part B Funds (20 USC 1413(a)(1), 34 CFR 300.148)

17. Description of Use of Part B Funds (20 USC 1232c(b)(1)(B)(ii), 34 CFR 300.149)

18. Additional Information if the State Educational Agency Provides Direct Services (20 U.S.C. 1413(b); 34 CFR 300.151)

19. Interagency Agreements (20 U.S.C. 1413(a)(13); 34 CFR 300.152)

20. Personnel Standards (20 U.S.C. 1413(a)(14); 34 CFR 300.153)

21. Transition of Children from the Part H to Part B Program (20 U.S.C. 1413(a)(15); 34 C.F.R. 300.154)

I. RIGHT TO EDUCATION POLICY STATEMENTS

Federal Requirement(s)

1. Information which shows that the State has in effect a policy which ensures that all children with disabilities, have the right to a free appropriate public education within the age ranges and timelines under §300.122.
2. The information must include a copy of each State statute, court order, State Attorney General opinion, and other State document that shows the source of the policy.
3. The information must show that the policy:
    - (i) Applies to all public agencies in the State;
    - (ii) Applies to all children with disabilities;
    - (iii) Implements the priorities established under 300.127(a)(1) of this subpart; and
    - (iv) Establishes timelines for implementing the policy, in accordance with §300.122.
4. The policies and procedures which the State will undertake or has undertaken in order to ensure that a free appropriate public education is available for all children with disabilities aged three through twenty-one within the State.
5. A copy of each statute, court order, attorney general decision or other State document which demonstrates that the State has established timelines in accordance with item (4) of this section.

State Standard(s)

Statutory authority is provided via South Dakota Codified Laws Title 13 hereafter cited as SDCL. Implementing regulations are found in Article 24:05 of Title 24 of Administration Rules of South Dakota hereafter cited as ARSD.

SDCL 13-37-1. Children in need of special education or special education and related services. As used in this chapter, "children in need of special education or special education and related services" means any person under the age of twenty-one years who is a resident of the state of South Dakota and who, because of his educational needs as defined by the state board of education in rules promulgated pursuant to chapter 1-26 and this chapter, is not adequately provided for through the usual facilities and services of the school and requires special education.

SDCL 13-28-5. Public school privileges free to children of legal age. The privileges of the public schools of any district shall be free to all persons with school residence within the district until they complete the secondary school program or until they reach the age of twenty-one.

SDCL 13-28-6. Continuation of privileges to pupil becoming twenty-one during school year. A pupil who is enrolled in school and becomes twenty-one years of age during the fiscal school year shall have free school privileges during that school year.

SDCL 13-37-1.1. Rules governing special education. The state board of education may adopt rules, pursuant to chapter 1-26, governing the education of children in need as follows:

(1) Establishing standards for educational and noneducational programs, public and nonpublic, designed to meet the special needs of children in need of special education or special education and related services;
(2) Establishing appeal procedures for disputes involving the placement or program of a child in need;
(3) Ensuring the performance of such powers and duties as assigned to the board by this chapter and as elsewhere provided by law;
(4) Establishing the qualifications, training, certification, revocation of certification, appointment, provision of services, reporting and monitoring of surrogate parents for children in need.

SDCL 13-37-1.2. Division as agency responsible for special education -- Regulatory and coordinating authority. The division of education of the department of education and cultural affairs is hereby designated as the state agency with responsibility for the education of children in need of special education or special education and related services. In accordance with §13-37-1.1, the division shall have regulatory and coordinating authority over any program within the department of education and cultural affairs, the department of social services or any other state agency insofar as such programs pertain to the special education of children in need of special education or special education and related services.

ARSD 24:05:13:01. Definitions.

(2) "Approved program," a written description of a school district's policies and procedures for implementing its special education program that is found by the division to comply with this article.

(3) "At no cost," the provision of specially designed instruction without charge to the parent except for incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(6) "Children in need of prolonged assistance," those children under the age of three who because of the intensity of their physical, mental, or emotional problems or a combination of such problems, need educational, social, psychological, or medical services beyond those which are traditionally offered in order to achieve their expected potential for useful and meaningful participation in society and for self-fulfillment.

(9) "Eligible student," a person under the age of twenty-one years who is a resident of the state of South Dakota who requires special education or special education and related services because of his educational needs.

(10) "Free appropriate public education," special education and related services which meet the following requirements:

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the state board of education in this article and Part B of the Individuals with Disabilities Education Act as amended;

(c) Include preschool, kindergarten, elementary school, and secondary school education in South Dakota; and

(d) Are provided in conformity with an individualized educational program and this article.

ARSD 24:05:22:03. Certified child. A certified child is a child in need of special education or special education and related services who has received a multidisciplinary evaluation and has an individual education program formulated and approved by a local placement committee. Documentation supporting a child's disabling condition as defined by Part B of the IDEA must be maintained by the school district for verification of its annual federal child count. This definition applies to all eligible children ages 3 through 21 and children under the age of 3 only in need of prolonged assistance.

ARSD 24:05:22:04. Programs for children under age three. Programs for children under the age of 3 years may be provided only to those children in need of prolonged assistance. A child's eligibility for special education or special education and related services shall continue from age 3 through completion of an approved public or nonpublic school secondary program or until age 21, as designated in that child's individual education program as set out in SDCL 13-37-1.

ARSD 24:05:22:05. Services to children age twenty-one. A student who is enrolled in school and becomes 21 years of age during the fiscal year shall have free school privileges during the school year.

State Plan

As stated in previous plans, South Dakota reaffirms its commitment assuming the provision of a free appropriate public education for all children with disabilities from birth to age twenty-one. Statutory recognition of the special needs of children with disabilities and the development of special programs began in 1943. South Dakota has mandated special education services since 1969 for children ages birth to twenty-one as established by SDCL Chapter 13-37.

Further support of this policy is substantiated by: 1) SDCL 13-37-1 which includes all children with disabilities under the age of twenty-one; 2) SDCL 13-28-5 which states that the programs of the public schools shall be free to all children, and 3) SDCL 13-37-1.2 which identifies the Division of Education as the regulatory and coordinating authority for all programs serving children with disabilities. Thus the mandate of a free appropriate public education is applicable to both public schools and other agencies by virtue of these statutes. A copy of SDCL Chapter 13-37 is found in Appendix A.

The state board of education has passed administrative rules to implement and expand the statutes. The definitions of "certified child", "children in need of prolonged assistance", and "eligible student" clearly provide for special education and related services for children birth to twenty-one years. Additionally, the rules define the procedures for local education agencies (LEAS) to follow in providing special education/related services to all children with disabilities as defined by the Individuals with Disabilities Education Act (IDEA-B). The rules include procedures for child identification, evaluation, individual education programs, placement process, least restrictive environment, and monitoring. A copy of ARSD, Article 24:05 is found in Appendix B.

South Dakota uses a noncategorical approach in the identification and delivery of service to children who may require special education. As stated in SDCL 13-37-1 children in need of special education or special education and related services are those children whose educational needs cannot be adequately provided for through the usual facilities and services of the school and require special education.

Therefore, "children in need of special education or special education and related services" as referred to by statute and administrative rules include children defined in 34 CFR 300.7 as having: mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or multiple disabilities.

As noted above, SDCL 13-37-1 does not define children in need of special education or special education and related services by disabling conditions. This holds true for all conditions with the exception of autism. Under SDCL 13-37-28, a criteria has been established for determining whether or not a diagnosis of autism is appropriate for a child. Administrative rules have been developed for implementing this statutory provision, including screening and diagnostic procedures. Rules have also been formulated on instruments to be used in the diagnosis of children suspected of having autism. In order to ensure consistency with the federal definition of autism, the state has developed the following rule:

24:05:25:27:01. Autism defined. Autism is a developmental disability that significantly affects verbal and nonverbal communication and social interaction and results in adverse effects on the child's educational performance.

Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance as defined under Part B of Individuals with Disabilities Education Act as in effect on November 13, 1992.

Please note, federal reference to "evident before age three" is contained in ARSD 24:05:25:28. Diagnostic criteria for autism.

II. FULL EDUCATIONAL OPPORTUNITIES GOAL

Federal Requirement(s)

The policies and procedures which the State will undertake, or has undertaken, in order to ensure that the State has a goal of providing full educational opportunity to all children with disabilities aged birth through twenty-one.

State Standard(s)

As noted in Section I, "Right To Education Policy Statements", of this plan, South Dakota Codified Laws (SDCL) and Administrative Rules of South Dakota (ARSD) provide the statutory and regulatory authority for providing free appropriate public education to children birth to twenty-one. Specific citations provided in Section I included the following:

SDCL 13-37-1. Children in need of special education or special education and related services.

SDCL 13-28-5. Public school privileges free to children of legal age.

SDCL 13-28-6. Continuation of privileges to pupil becoming twenty-one during school year.

SDCL 13-37-1.1. Rules governing special education.

SDCL 13-37-1.2. Division as agency responsible for special education -- regulatory and coordinating authority.

ARSD 24:05:13:01. Definitions. These included the following: approved program, at no cost, children in need of prolonged assistance, eligible student, and free appropriate public education.

ARSD 24:05:22:03. Certified child.

ARSD 24:05:22:04. Programs for children under age three.

ARSD 24:05:22:05. Services to children age twenty-one.

In addition to the above standards, ARSD provides for the submission of policies and procedures, by school districts, applicable to this requirement, as noted below.

ARSD 24:05:21:01. School district to file comprehensive plans -- Contents. Each school district must have a current comprehensive plan on file with the office of special education. Districts shall update comprehensive plans every three years from filing and recertify their content annually.

Comprehensive plans shall establish compliance with this article and the Individuals with Disabilities Education Act, Part B as amended, and must include the following:

(1) Full program service goals and procedures, including a timetable for accomplishing the goals and a description of the kind and number of facilities, personnel, and services necessary to meet the goals;
(2) Ongoing child identification procedures;
(3) Referral, evaluation, and placement procedures;
(4) Procedures for the development and annual review of the individual educational program for each child;
(5) Procedures for least restrictive environment;
(6) Policies and procedures on confidentiality of information;
(7) Procedural safeguards, including the following:
    (a) Opportunity to examine records;
    (b) Independent educational evaluation;
    (c) Prior notice and parent consent;
    (d) Impartial due process hearing;
    (e) Surrogate parent procedures;
    (f) Protection in evaluation procedures; and
    (g) Procedures for evaluating specific learning disabilities.
(8) Procedures for private school placement;
(9) Procedures for voluntary enrollment in nonpublic schools;
(10) Procedures for parent involvement in meeting the full program service goals of the district;
(11) Staff development procedures for the implementation and use of the comprehensive system of personnel development established by the division of education;
(12) Procedures for the employment of special education personnel who have the special education endorsement as required in §24:02:03:21 or 24:02:03:21.01 and
(13) Policy on the provision of facilities, materials, and equipment used for special education that are comparable to those used in regular education.

ARSD 24:05:21:02. Approval of district's program -- Content of review. The office of special education shall annually approve special education programs that meet the standards of the state board of education. Each school district shall submit program approval information by December 1 of each school year. The school district shall be notified of approval or disapproval by letter from the office of special education. The review shall include the following:

(1) Current comprehensive plan;
(2) Certified personnel; and
(3) Number of certified children served.

ARSD 24:05:21:03. Comprehensive plans serve as district's application for federal funds. The information required in a district's comprehensive plan coupled with statements of expenditures, descriptions of the annual use of Part B funds, and certification of federal assurances shall constitute a local education application for funds under Individuals with Disabilities Education Act, Part B.

State Plan

As identified in previous plans, the Division of Education reaffirms the goal of providing a full educational opportunity to all children with disabilities from birth through age twenty-one. Currently, SDCL and ARSD clearly mandate the provision of special education and related services to children with disabilities, birth to twenty-one. Procedures to facilitate meeting the State's birth through twenty-one goal are:

(a) Each local education agency must have on file with the Office of Special Education an approved comprehensive plan which includes provisions for: 1) full program services goals and procedures, 2) ongoing child identification, 3) referral, multidisciplinary evaluation, and placement, and 4) development and annual review of individual educational programs. Local education agencies must update comprehensive plans every three years and annually recertify their content (see Appendix C and D).

In accordance with ARSD, local district comprehensive plans are reviewed by the Office of Special Education for consistency with the requirements of Part B of IDEA. Comprehensive plans serve as the local district's application for IDEA-B funds pursuant to ARSD.

(b) Further information relative to implementation of child identification, evaluation, and placement procedures is provided to local districts and other agencies as part of the state's ongoing technical assistance efforts.

(c) The Office of Special Education, as part of its monitoring process, reviews how each district implements its procedures for achieving full program services inclusive of child identification, multidisciplinary evaluation, and placement. Each area is reviewed in the following manner: 1) presite activities (review of comprehensive plan and other documentation) and 2) onsite activities (child file review, staff interviews, and parent survey). Applicable sections of the monitoring document include child identification, protection in evaluation procedures, free appropriate public education, and individual educational programs. A copy of the monitoring system is found in Appendix E.

The South Dakota Department of Education and Cultural Affairs has completed steps toward FEOG through SDCL 13-28-6, ARSD 24:05:22:03, and ARSD 24:05:22:05. Thus, many students already receive special education/related services consistent with FEOG. During this state plan period, the SEA will complete the following steps:

1) Review of current statutory/regulatory language;
2) Review and receive recommendations relative to FEOG with the State's special education advisory panel;
3) Collect data/information relative to student population and programmatic considerations;
4) Review with Secretary of the Department of Education and Cultural Affairs; and,
5) Change policy/procedure to ensure the provision of FAPE to student's with disabilities through the age of twenty-one.

III. CHILD IDENTIFICATION

Federal Requirement(s)

1. The policies and procedures which the state will undertake or has undertaken to ensure that:

   (i) All children with disabilities regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated; and

   (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

2. Plan must include:

   (i) Name of agency responsible for state-wide coordination of planning and implementing the child identification effort, if other than State Educational Agency;

   (ii) List of other agencies participation in child identification and describe the nature and extent of participation of each agency; and

   (iii) Describe the extent to which:

      (a) The activities described in paragraph (1) of this section have been achieved under the current annual program plan; and

      (b) The resources named for these activities in that plan have been used;

   (iv) Describe each type of activity to be carried out during the period of the plan including the role of the coordinating agency, timelines, resources, and expected outcomes.

   (v) Describe how the policies and procedures under paragraph (1) of this section will be monitored to ensure that the State educational agency obtains;

(a) The number of children with disabilities within each disability category that have been identified, located and evaluated; and

(b) Information adequate to evaluate the effectiveness of those policies and procedures.

(vi) Describe the methods used to determine which children are and are not receiving special education and related services.

State Standards

ARSD 24:05:17:01. State-wide coordination of child find and data collection activities. The division of education office of special education, is the state agency responsible for coordinating the planning and implementation of state-wide child find and data collection activities. Child identification procedures are a required component in each school district's comprehensive plan for special education. The district shall provide information in the form required by the office of special education.

Before September 15 each year the office of special education shall review and approve these procedures for all school districts. The results of this review process shall be compiled and analyzed by special education staff and reported back to the districts before October 15 each year.

This process combined with the state's federal child count procedures serve as the basis for developing the child identification section in the state plan for IDEA-B. These procedures are extended to agencies other than school districts through the use of interagency agreements.

ARSD 24:05:21:01. School district must file comprehensive plans - contents. Each school district must have a current comprehensive plan on file with the office of special education. Districts shall update comprehensive plans every three years from filing and recertify their content annually.

Comprehensive plans shall establish compliance with this article and the IDEA, Part B as amended, and must include the following:

(1) Full program service goals and procedures, including a timetable for accomplishing the goals and a description

of the kind and number of facilities, personnel, and services necessary to meet the goals;

(2) Ongoing child identification procedures;
(3) Referral, evaluation and placement procedures;
(4) Procedures for the development and annual review of the individual educational program for each child;
(5) Procedures for least restrictive environment;
(6) Policies and procedures on confidentiality of information;
(7) Procedural safeguards, to include:

    (a) Opportunity to examine records;
    (b) Independent educational evaluation;
    (c) Prior notice and parent consent;
    (d) Impartial due process hearing;
    (e) Surrogate parent procedures;
    (f) Protection in evaluation procedures; and,
    (g) Procedures for evaluating specific learning disabilities.

(8) Procedures for private school placement;
(9) Procedures for voluntary enrollment in nonpublic schools;
(10) Procedures for parent involvement in meeting the full program services goals of the district;
(11) Staff development procedures for the implementation and use of the comprehensive system of personnel development established by the division of education;
(12) Procedures for the employment of special education personnel who have the special education endorsement as required in section 24:02:03:21 or 24:02:03:21:01; and,
(13) Policy on the provision of quality facilities, materials, and equipment used for special education being comparable to those used in regular education;

ARSD 24:05:22:01. District required to identify children in need of special education or special education and related services. Each school district shall develop and utilize a system for the identification, location, and evaluation of children in need of special education or special education and related services. The system must include all children residing within the jurisdiction of the district between the ages of birth through twenty-one regardless of the severity of their disability, including children in all public and private agencies and institutions within the legal boundaries of the district.

ARSD 24:05:22:02. Minimum procedures. At a minimum, a local school district's procedures for implementing its child identification system must include the following:

(1) The name and title of the individual responsible for the coordination, implementation, and documentation of the system;

(2) A written description of the district's annual public awareness campaign for informing the parents of children residing within the legal boundaries of the district and other interested parties located within the jurisdiction of the district, all public and private agencies and institutions;

(3) The establishment of procedures for collecting, maintaining, and reporting current and accurate data on all child identification activities which must be ongoing and include children not currently enrolled in the public school education program. These procedures must be:

- (a) In written form,
- (b) Contained in each district's special education comprehensive plan; and,
- (c) Describe each child identification activity for which the district is responsible.

(4) A practical method of determining which children are and are not currently receiving needed special education or special education and related services.

Documentation supporting the implementation of a local school district's child identification system shall be maintained by the district for review by the office of special education staff during onsite monitoring visits, and include annual child count data submitted to the South Dakota division of education for approval.

ARSD 24:05:24:01. Referral. Referral includes any written request which brings a student to the attention of a school district administrator (building principal, superintendent, or special education director) as a student who may be in need of special education. A referral made by a parent may be submitted verbally, but it must be documented by a district administrator. Other sources of referrals include the following:

(1) Referral through screening;
(2) Referral by classroom teacher;
(3) Referral by other district personnel; and
(4) Referral by other public or private agencies.

ARSD 24:05:24:02. Duties of a district after referral. Upon receiving a referral the school district shall conduct an informal review or may proceed with the evaluation process. An informal review includes a conference, if appropriate and necessary, either in person or by telephone, with the person making the referral and a review of the student's school record.

ARSD 24:05:24:03. Duties of a district after informal review. If, after an informal review arising from a parental referral, the district determines that no evaluation is necessary, the district shall inform the parents of its decision and the reasons for the decision. It shall also inform the parents of their due process rights.

If after informal review, the district determines that further evaluation is necessary, the district shall conduct a multidisciplinary evaluation with the consent of the parents.

ARSD 24:05:24:04. Documentation of referrals not evaluated. All referrals of students that do not result in evaluation shall be documented by the district.

State Plan

The Division of Education, Office of Special Education reaffirms its policy that all children with disabilities in need of special education or special education and related services be identified, located, and evaluated pursuant to 34 CFR 300.128. The following items are integral to this policy and include procedures for implementation:

A. Within the Department of Education and Cultural Affairs, Division of Education, the Office of Special Education is the responsible agency for statewide coordination of planning and implementation of child identification efforts as provided by ARSD 24:05:17:01.

B. Child identification efforts include the participation of numerous public and private agencies such as the following:

1. Department of Social Services

a. Early Periodic Screening, Diagnosis, And Treatment (EPSDT)

This program, administered by the Medical Services Division of Social Services, provides for:

(i) screening: simple identification procedures;

(ii) diagnosis: determination of the nature or cause of physical or mental disease or abnormality through the combined use of health history, physical, developmental, and psychological examination, and laboratory tests and X-rays;

(iii) treatment: means, physician's or dentist's services, optometrist's or audiologist's services, hospital services, clinic services, etc. to prevent, correct, or ameliorate disease or abnormalities detected by screening and diagnostic services;

(iv) early: means, in case of a family already receiving assistance, as early as possible in the child's life; or as soon as a family's eligibility for assistance has been established; and,

(v) periodic: means, at intervals established for screening by medical, dental or other health care experts at appropriate periods of time to assure that disease or disability is not incipient or present.

The program may be accessed by local education agencies to assist families and children that are Medicaid eligible, ages birth to twenty-one.

b. Office of Child Protection

Regional child protection teams, typically composed of school district, health, medical, social work, and law enforcement personnel, may be involved in child identification through evaluation (i.e. psychological, medical) in response to referral to the team.

2. Department of Human Services

The Department's Division of Mental Health assists local education agencies in the further identification of students with disabilities through access of a statewide network of Mental Health Centers and Adjustment Training Centers which provide evaluation/referral services.

3. Department of Health

a. Community Health Nursing

The Community Health Nursing program provides child health conferences designed to identify health problems in children at an early age and stimulate referral to appropriate resources. Additionally, Community Health Nurses are often members of preschool screening teams and provide screening in the areas of health, vision, and hearing.

b. Children's Special Health Services

This program provides fifteen "specialty" clinics held in four sites statewide. The Specialty clinics (i.e. Neurology, orthopedics, cranio-facial anomalies) provide evaluation and related health services to families and children. Clinic results are given to the child's school district.

The Health Department also provides developmental screening and follow-up for "graduates" of intensive care nurseries to assist families in the care of their children and provide resource information, which may include the school district.

3. Unified Judicial System

Court Services maintains contact with the Division of Education for the purposes of referral, evaluation, and placement of children under its jurisdiction.

4. Bureau of Indian Affairs (BIA)

The Aberdeen area office works cooperatively with the Division of Education and school districts to provide for the evaluation and placement of children with disabilities under its jurisdiction.

5. Tribal Courts/Tribal Social Services

These agencies may initiate referrals to the Division of Education or school districts based on criteria that are unique to each of the nine reservations in South Dakota.

6. Other public and private agencies

a. Center for Developmental Disabilities

This University Affiliated Program (UAP) is located in the School of Medicine at the University of South Dakota. The program provides multidisciplinary evaluation services and works closely with the Division of Education in initiation of programs (i.e. early childhood, autism).

b. Children's Care Hospital and School.

This private residential school provides multidisciplinary evaluation and consultation to families and schools through its EPIC (evaluation and planning for infants and children) program.

c. School for the Deaf, School for the Visually Impaired.

Through interagency agreements developed between the Division of Education and these schools, evaluation and consultation services shall be provided to school districts. Additionally, the School for the Deaf maintains a "high risk" registry of infants who may develop hearing problems.

d. Headstart

This agency provides annual screening and initiates referral of children to school districts if identified children do not meet Headstart eligibility guidelines.

e. Interagency Coordinating Council.

The council, established pursuant to P.L. 99-457, meets four times per year. The council's goals include: increasing public awareness of early intervention services and implementation of a tracking system to identify and provide services to infants and toddlers, ages birth through two years. The Department of Education has been designated by the Governor as lead agency for early childhood initiatives under P.L.99-457.

The primary agencies involved in child identification are the state's local education agencies. State law mandates each school district to provide all of it's resident children in need of special education with an appropriate education program. This mandate is accomplished in part through identification, location, and evaluation.

ARSD 24:05:21:01 mandates school districts to have current comprehensive plans which include ongoing child identification procedures. This obligation is restated in ARSD 24:05:22:01, district required to identify children in need of special education or special education and related services.

Minimum procedures for district implementation of a child identification system are described in ARSD 24:05:22:02 and include:

(1) designated person responsible for child identification;

(2) a written description of the district's public awareness campaign;

(3) procedures for collecting, maintaining, and reporting current and accurate data on all child identification activities; and,

(4) a practical method of determining which children are and are not currently receiving special education and related services.

The above is supplemented by district procedures for referral and multidisciplinary evaluation pursuant to ARSD 24:05:24 and 24:05:25.

D. The extent to which the activities described in this section have been achieved under the state's current state plan and the resources utilized are as follows:

1. The Departments of Social Services and Education entered into a memorandum of understanding regarding the use of the state's Medicaid program. The agreement established a framework for local education agencies to seek reimbursement for Medicaid

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eligible children receiving a medically necessary covered service, including evaluations. The Department of Social Services revised its state administrative rules and Medicaid plan to accomplish this goal.

2. The Department of Human Services revised its state administrative rules in accordance with the State Mental Health Plan and CASSP initiative to include education, social services, and health personnel on local screening and referral teams.

3. The Departments of Health, Social Services, Human Services, Education, and Corrections entered into a formal agreement for the joint funding of regional interagency facilitators as one means of coordinating services for children and families with special needs.

4. Interagency agreements were developed between the Department of Education and the Schools for the Deaf and Visually Impaired for the purpose of coordinating referrals, evaluation, and service delivery.

5. An interagency agreement was entered into by the Departments of Education, Health, Social Services, and Human Services outlining the cost factors for evaluation and coordination of the state's child find system, as required under Part H of IDEA.

6. Thirty-four (34) local interagency coordinating networks were established under the Part H program with each network being responsible for developing local child find committees that include representatives from Health, Education, Social Services and Human Services.

E. The role of the Division of Education, Office of Special Education as the coordinating agency includes:

1. Monitoring the implementation of child identification procedures by local education agencies;

2. Provision of technical assistance to local education agencies and other agencies and organizations;

3. Information and data collection and dissemination; and,

4. Maintenance of interagency collaboration.

As per ARSD 24:05:17:01, district child identification procedures will be reviewed and approved annually. To assure the implementation of child identification activities, local education agencies are reviewed onsite inclusive of child identification efforts. The review instrument used by the state agency is found in Appendix E.

The Office of Special Education will continue to provide technical assistance in the area of child identification to local education agencies whenever this area is determined to be deficient as a result of monitoring, or whenever the local district requests such assistance. During FY 96, request for proposals (RFPs) will be disseminated to school districts and other agencies to improve interagency child find activities via P.L. 99-457 funding.

Additionally, the state agency will continue to make available information on child identification to schools, parents, and other agencies and organizations. Information is disseminated through statewide publications such as the Parent Connection Newsletter, and the Division of Education's "Challenge" newsletter. The Division, through its early childhood initiatives, provides "growth charts" to all families of newborn babies through the state's hospitals. The Division also runs periodic public service announcements (PSAs) relative to interagency child find efforts and the importance of early intervention.

As described in ARSD 24:05:17, "child count", the state's federal child count procedures in conjunction with district child identification procedures serve as the basis of information and data collection and dissemination. A copy of State Administrative Rules is found in Appendix B. Through analysis of this data and the results of annual needs assessment, the state agency will determine those groups of children who may be underserved and provide staff development opportunities to better meet the needs of those children.

The state agency will maintain the cooperative efforts previously described in Subpart D throughout FY 96-98. Particular emphasis will be given to interagency collaboration in the area of early childhood.

Child identification activities of LEAs and the state agency will be ongoing during FY 96-98. State Administrative Rules require school districts to implement ongoing child identification efforts. The state agency monitors selected school district's child identification efforts annually through approval of comprehensive plans and onsite compliance monitoring.

Further, the state agency provides technical assistance to LEAs and other agencies annually through "general information" dissemination and specific assistance on an "as needed" basis.

The state agency will collect and disseminate information/data on a yearly basis; this timeline holds true for interagency collaboration.

In terms of expected outcomes, child identification activities initiated by LEAs, the state agency, and related agencies and organizations during FY 96-98 will result in a cohesive system ensuring the identification, location, and evaluation of all children with disabilities. The development of updated interagency agreements, particularly in the area of early childhood, will be a significant outcome during the period of this plan.

F. The methods the state agency will use to determine which children are and are not receiving special education and related services are:

1. Information in this area from local education agencies' written child identification procedures as required by ARSD 24:05:22:02;

2. Information from monitoring including review of documentation of children referred for evaluation and potential placement and subsequently were not placed into special education, and review of prereferral strategies, i.e. teacher assistance teams;

3. Annual child count data;

4. Information from individual family service plan (IFSP);

5. Results of hearings and complaints;

6. The tracking system established pursuant to P.L. 99-457; and

7. Information from other agencies previously described.

The above sources of information taken as a whole, will reflect which children are and are not receiving special education and related services, and will provide a base of information to determine what areas of child identification need to be targeted for further development.

IV. INDIVIDUALIZED EDUCATION PROGRAM

Federal Requirement(s)

The state plan must include information which shows that each public agency in the state maintains records of the IEPs for each child with a disability and establishes, reviews, and revises each program in accordance with 300.340-350 as provided in 34 CFR Part 300, Subpart C. Included are state policy, statutes, and standards.

State Standards

SDCL 13-37-1.1. Rules governing special education. The state board of education may adopt rules, pursuant to chapter 1-26, governing the education of children in need as follows:

(1) Establishing standards for educational and noneducational programs, public and nonpublic, designed to meet the special needs of children in need of special education or special education and related services;
(2) Establishing appeal procedures for disputes involving the placement or program of a child in need;
(3) Ensuring the performance of such powers and duties as assigned to the board by this chapter and as elsewhere provided by law;
(4) Establishing the qualifications, training, certification, revocation of certification, appointment, provision of services, reporting and monitoring of surrogate parents for children in need.

SDCL 13-37-1.2. Division as agency responsible for special education -- Regulatory and coordinating authority. The division of education of the department of education and cultural affairs is hereby designated as the state agency with responsibility for the education of children in need of special education or special education and related services. In accordance with §13-37-1.1, the division shall have regulatory and coordinating authority over any program within the department of education and cultural affairs, the department of social services or any other state agency insofar as such programs pertain to the special education of children in need of special education or special education and related services.

SDCL 13-37-14.1. District responsibility to provide program. The school board shall provide all of its resident children in need with an appropriate educational program.

ARSD 24:05:13:01. Definitions.

(10) "Free appropriate public education," special education and related services which meet the following requirements:

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the state board of education in this article and Part B of the IDEA as amended;

(c) Include preschool, kindergarten, elementary school, and secondary school education in South Dakota; and

(d) Are provided in conformity with an individualized educational program and this article;

(11) "Individual educational program," a written educational program for a specific individual, in accordance with §24:05:27:01, based on the multidisciplinary evaluation and developed by a local school placement committee;

ARSD 24:05:21:01. School district must file comprehensive plans -- contents. Each school district must have a current comprehensive plan on file with the office of special education. Districts shall update comprehensive plans every three years from filing and recertify their content annually.

Comprehensive plans shall establish compliance with this article and the IDEA, Part B, and must include the following:

... (4) Procedures for the development and annual review of the individual educational program for each child...

ARSD 24:05:27:10. Individual educational programs for students placed in private schools. Before a resident school district places or refers a child in need of special education or special education and related services to a private school, facility, or a contracting district, the district shall initiate and conduct a placement committee meeting to develop an individual educational program for the child in accordance with district procedures.

The district shall ensure that a representative of the private school or facility attends the placement committee meeting. If the representative of the private school or facility cannot attend the placement committee meeting, the district shall use other methods to ensure participation, including individual or conference telephone calls.

The district shall develop an individual educational program for each child in need of special education or special education and related services who was placed in a private school or facility by the district before the effective date of the IDEA, Part B regulations.

After a child in need of special education or special education and related services enters a private school or facility, any meetings to review and revise the child's individual educational program may be initiated and conducted by the private school or facility at the discretion of the district.

If the private school or facility initiates and conducts these meetings, the district shall ensure that the parents and a district representative are involved in any decision about the child's individual educational program and agree to any proposed changes in the program before those changes are implemented.

Even if a private school or facility implements a child's individual educational program, responsibility for compliance with this section remains with the school district and the division of education.

ARSD 24:05:27:11. Individual educational programs for students voluntarily enrolled in nonpublic schools. If a child in need of special education or special education and related services is enrolled in a parochial or other private school and receives special education or related services from a school district, the district shall initiate and conduct placement committee meetings to develop, review, and revise an individual education program for the child in accordance with district procedures and ensure that a representative of the parochial or other private school attends each placement committee meeting. If the representative cannot attend, the school district shall use other methods to ensure participants by the private school, including individual or conference telephone calls.

ARSD 24:05:25:22. Placement committee to develop IEP. If the child is determined to be in need of special education or special education and related services, the placement committee shall develop an appropriate IEP for the child. At the beginning of each school year thereafter, each district shall have in effect an IEP for every child with disabilities who is receiving special education or special education and related services from the district. All IEPs shall be developed in accordance with the provision of this article.

ARSD 24:05:25:23. Decisions of placement committee. All decisions of the placement committee shall be made jointly by the parents and school personnel through the IEP process and specified on the child's IEP. An IEP must be in effect before special education and related services are provided to a child and be implemented as soon as possible following a placement committee meeting.

ARSD 24:05:25:21. Placement committee to determine placement. The placement committee shall determine whether the child is in need of special education or special education and related services. Each district is responsible for initiating and conducting placement meetings for the purpose of developing, reviewing, and revising a child with a disability's IEP.

ARSD 24:05:27:02. Placement committee meeting date. Placement committee meetings must be held within 30 calendar days after receipt of evaluation results determining that a child needs special education and related services.

ARSD 24:05:27:08. Yearly review and revision of individual educational programs. Each school district shall initiate and conduct placement meetings to periodically review each child's individual educational program and, if appropriate, revise its provisions. A placement meeting must be held for this purpose at least once a year.

ARSD 24:05:25:14. Selection of placement committee members -- required members. The selection of placement committee members may vary according to the needs of the child. Members must include any parents of the child, the child when appropriate, the superintendent or designee who is qualified to provide, or supervise the provision of special education, a regular classroom teacher referring or receiving a child, an educator from the field of special education, if necessary, an evaluator to interpret the multidisciplinary evaluation data, and other individuals at the discretion of the parent or district.

ARSD 24:05:25:15. First-time evaluations. For a child being evaluated for the first time, the school district shall ensure that a member of the multidisciplinary evaluation team participate in the first meeting of the placement committee or that the representative of the local education agency, the child's teacher, or some other person is present at the first meeting of the placement committee who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

ARSD 24:05:25:16. Parent participation. Each district shall ensure that one or both parents of the child are present at each placement committee meeting or are afforded the opportunity to participate. The district shall notify parents of the meeting early enough to ensure that they will have an opportunity to attend, scheduling the meeting at a mutually-agreed upon time and place. The notice to the parents shall state the purpose, time, and location of the placement committee meeting, who will be in attendance, and give permission to bring other people to the meeting.

If parents cannot attend, the district shall use other methods to ensure participation, including individual or conference telephone calls.

ARSD 24:05:25:17. Conduct of placement meetings without parents. A placement committee meeting may be conducted without a parent in attendance if the district is unable to convince the parents that they should attend. The district must have written documentation of its attempts to arrange a mutually agreed upon time and place, such as the following:

(1) Records and dates of completed telephone calls to parents and the results of those calls;
(2) Copies of dated correspondence sent to the parents and any responses received; and
(3) Records and dates of visits made to the parent's home or place of employment and the results of those visits.

ARSD 24:05:25:18. Action to ensure parent understands. The district shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

ARSD 24:05:25:19. Parents to receive copy of individual education program. The district shall give the parents a copy of the individual education program developed at the placement committee meeting.

ARSD 24:05:27:14. Individual educational program accountability. Each school district must provide a child in need of special education or special education and related services with services in accordance with an individual educational program. However, no school district, teacher, or other person may be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

Other major state standards relative to IEPs addressed in this section include:

ARSD 24:05:27:01. Requirements for individual educational program.

ARSD 24:05:25:16.01. Participation of student in placement committee meeting.

ARSD 24:05:25:16.02. Required student invitation.

ARSD 24:05:27:13.01. Agency responsibilities for transition services.

ARSD 24:05:27:13.02. Transition services.

ARSD 24:05:27:18. Assistive technology device.

ARSD 24:05:27:19. Assistive technology service.

State Plan

The Division of Education, Office of Special Education reaffirms its policy that each public agency in the state must establish, implement, review, revise, and maintain records of individualized education programs (IEPs) for each child with disabilities. The following procedures support this policy:

1. Each public agency shall develop and implement an IEP for each child with disabilities. An IEP shall be developed and implemented for each child:

    a. Placed in or referred to a private school or facility by a public agency; and

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(6) The projected date for initiation and the anticipated duration of services to be provided the child;

(7) Criteria for measurement and evaluation procedures and schedules for determining, at least annually, if short-term instructional objectives are being met;

(8) Justification for placement in other than the regular education programs; and

(9) A list of individuals responsible for implementing the individual educational program.

6. 24:05:27:13.01. Agency responsibilities for transition services. If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a placement committee meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

   Nothing in this section relieves a participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

   A participating agency is a state or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

7. 24:05:27:13.02. Transition services. Transition services are a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to postschool activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based on the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other postschool adult living objectives, and,

   b. Enrolled in a private school and receiving special educational or related services from a public agency.

SDCL 13-37-14.1 requires school districts to provide all of its resident children in need with appropriate educational programs. Pursuant to ARSD 24:05:27:10 and 24:05:27:11, school districts must initiate and conduct placement committee meetings to develop IEPs for children placed in private schools by the public agency or children voluntarily enrolled in nonpublic schools.

2. Each child's IEP shall be in effect at the beginning of each school year (ARSD 24:05:25:22).

3. An IEP shall be developed and approved by the placement committee before special education and related services are provided to a child (ARSD 24:05:25:23).

As required by ARSD 24:05:27:02, placement committee meetings must be held within thirty calendar days of receipt of evaluation results. If the placement committee determines that a child is in need of special education or special education and related services, an IEP will be developed for the child, as per ARSD 24:05:25:22 and 24:05:25:23.

4. A child's IEP shall be implemented as soon as possible following the placement committee (IEP) meeting (ARSD 24:05:25:23).

5. Each public agency shall be responsible for initiating and conducting meetings to develop, review, and revise a child's IEP (ARSD 24:05:25:21).

6. A meeting to review and/or revise each IEP shall be held at least once per year. Support for this procedure is found in ARSD 24:05:27:08.

7. Members present at the placement committee meeting (IEP meeting) shall include:

   a. A representative of the public agency, other than the child's teacher, qualified to provide, or supervise the provision of, special education;

   b. The child's teacher;

c. One or both of the child's parents;

d. The child, when appropriate; and

e. Other individuals at the discretion of the parent or agency.

f. For a child evaluated for the first time, a member of the evaluation team or a representative of the agency, teacher, or some other person knowledgeable about the evaluation procedures used and results achieved, will participate in the placement committee meeting.

As provided in ARSD 24:05:25:14 and 24:05:25:15, required members of the placement committee include: parents, child (when appropriate), the superintendent or designee, the regular classroom teacher referring or receiving a child; a special educator, and evaluator or other person who is knowledgeable about evaluation procedures and the meaning of results particularly for a child evaluated for the first time.

The responsibilities of the placement committee are:

(1) Determine a child's eligibility for special education and related services through interpretation of multidisciplinary evaluation data;

(2) Develop and approve an individual educational program for each child; and

(3) Decide upon the least restrictive environment in which to implement the IEP.

8. Parents shall be present or have the opportunity to participate in each IEP meeting. In providing prior notice of placement meetings, the local education agency shall insure that:

(a) Notification is early enough to insure an opportunity to attend;

(b) The meeting is scheduled at a mutually agreed upon time and place; and

(c) The notice indicates the purpose, time and location of the meeting, who will attend, and permission to bring other people.

9. Each local education agency shall provide other arrangements or alternative methods including telephone calls to insure parent participation when the parent cannot attend.

If the parents cannot attend, the local education agency shall maintain documentation of attempts to arrange mutually agreeable times and places for the meetings. Documentation of attempts at parental contact may include:

(a) Telephone calls made or attempted and the results of the calls;

(b) Copies of correspondence sent to the parents or received from parents; and

(c) Staff visits made to the home or place of employment and the results of such visits.

10. Each local education agency shall insure that necessary action is taken to guarantee that parents understand the intend and procedures of the placement committee meeting. This action may include arranging for an interpreter for parents who are deaf or hearing impaired or whose primary language is not English.

State administrative rules which implement items 8-10 are: 24:05:25:16, 17, 18, and 21.

11. Parents shall receive a copy of the IEP upon request from the local education agency, pursuant to ARSD 24:05:25:19.

12. As provided in ARSD 24:05:27:01 Requirements for individual educational program, each child's IEP shall include the following statements:

(1) Child's present level of educational performance;
(2) Annual goals and short-term instructional objectives;

(3) Specific special education and related services to be provided;
(4) Extent to which the child will be able to participate in the regular educational program;
(5) Projected date for initiation and anticipated duration of services to be provided the child;
(6) Criteria for measurement and evaluation of instructional objectives;
(7) Schedules for determining, at least annually, whether short-term instructional objectives are being met;
(8) Justification for placement in other than the regular educational program;
(9) List of individuals responsible for implementing the individual educational program; and
(10) A statement of the needed transition services for students beginning no later than age 16 and a younger age if determined appropriate, including, as applicable, a statement of the interagency responsibilities, or linkages, or both, before the student leaves the school setting.

If the placement committee determines that any given transition service is not needed, the IEP must include a statement to that effect and the reasons for such a determination.

13. Prior to referring a child in need of special education or special education and related service to or placing such child in a private school or facility, an LEA shall:

(a) Initiate and conduct an IEP (placement committee) meeting, and

(b) Insure the participation of the private school or facility in the IEP (placement committee) meeting through either personal attendance or the use of other arrangements such as individual or conference telephone calls.

14. After a child is placed in a private school:

(a) Meetings to review and revise the child's IEP may be conducted by the private school;

(b) Parents and an LEA representative must be involved in any decision about the IEP and agree to any proposed changes before those changes are implemented; and

(c) Responsibility for compliance with all the provisions of this section remain with the LEA and state education agency.

15. For a child in need of special education or special education and related services enrolled in a private school or parochial school, the LEA shall (if the child receives special education or related services from an LEA):

(a) Initiate and conduct placement meetings to develop, review, and revise an IEP; and

(b) Insure participation of the private school representative in the meetings.

State administrative rules which implement items 13-15 are ARSD 24:05:27:10, and 24:05:27:11.

As part of the state education agency monitoring process of public and private agencies, LEA implementation of the requirements of this part is reviewed. Each LEA must have on file with the state agency an approved comprehensive plan which in part addresses the area of individualized education programs. As part of monitoring, the state agency documents that all children reported by the LEA as of December 1 of each year have IEPs in place. Additionally, a random sampling of 10% of student files are reviewed in-depth to verify that all requirements are in place. (See Appendix D and E).

In order to ensure consistency with the IDEA Amendments, including the implementing regulations in 34 CFR Part 300, issued on September 29, 1992, the state made the following conforming changes in its administrative rules:

1. 24:05:25:16. Parent participation. Each district shall ensure that one or both parents of the child are present at each placement committee meeting or are afforded the opportunity to participate. The district shall notify parents of the meeting early enough to ensure that they will have an opportunity to attend, scheduling the meeting at a mutually agreed-upon time

and place. The notice to the parents shall state the purpose, time, and location of the placement committee meeting, and who will be in attendance, and shall give permission to bring other people to the meeting.

If a purpose of the placement committee meeting is the consideration of transition services for a student, the notice must also indicate this purpose, indicate that the district will invite the student, and identify any other agency that will be invited to send a representative.

If parents cannot attend, the district shall use other methods to ensure participation, including individual or conference telephone calls.

2. 24:05:25:16.01. Participation of student in placement committee meeting. If a purpose of the placement committee meeting is the consideration of transition services for a student, the district shall invite the student and a representative of any other agency that is likely to be responsible for providing or paying for transition services.

   If the student does not attend, the district shall take other steps, for example student/teacher conference, to ensure that the student's preferences and interests are considered.

   If an agency invited to send a representative to a placement committee meeting does not do so, the district shall take other steps, for example individual calls, conference calls or correspondence, to obtain the participation of the other agency in the planning of any transition services.

3. 24:05:25:16.02. Required student invitation. The district shall invite each student to participate in an IEP meeting if a purpose of the meeting is the consideration of transition services for the student. For all students, beginning no later than age 16, or if a younger age as determined by the placement committee, one of the purposes of the annual meeting is the planning of transition services.

   If transition services are initially discussed at a meeting that does not include a student who is younger than 16, the district shall ensure that a subsequent IEP meeting to which the student is invited is conducted for that purpose before a decision about transition services for the student is made.

4. 24:05:25:24. Short-term evaluation programs. The placement of eligible children in short-term evaluation programs shall provide for the following:

(1) Developing an interim individual education program before providing special education or special education and related services;

(2) Obtaining written parental consent, including meeting the prior notice requirements before the child is placed in the program;

(3) Describing the special education or special education and related services to be provided and evaluations to be completed during the placement period; and

(4) Conducting a placement committee meeting at the end of the evaluation period for the purpose of finalizing an individual education program.

5. 24:05:27:01. Requirements for individual educational program. Each child's individual educational program shall incorporate multidisciplinary evaluation information and shall include, at a minimum, the following:

(1) The present level of educational performance;

(2) Annual goals and short-term instructional objectives;

(3) Special education and related services to be provided;

(4) The extent to which the child will be able to participate in the regular education programs;

(5) A statement of the needed transition services for the student, as defined in §24:05:27:13.02, beginning no later than age 16 and a younger age if determined appropriate, including, as applicable, a statement of the interagency responsibilities or linkages, or both, before the student leaves the school setting.

If the placement committee determines that services are not needed in one or more of the areas specified in §24:05:27:13.02, the IEP must include a statement to that effect and the reasons for such a determination.

if appropriate, acquisition of daily living skills and functional vocational evaluation.

8. 24:05:27:16. Related services provided at no cost. The district shall provide services at no cost to the parent. Related services include speech pathology, audiological services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling, medical services for diagnostic or evaluation purposes, school health services, social work services in schools, and parental counseling and training.

9. 24:05:27:16.01. Rehabilitation counseling services. Rehabilitation counseling services are services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended through May 9, 1980.

10. 24:05:27:18. Assistive technology device. An assistive technology device is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities.

11. 24:05:27:19 Assistive technology service. An assistive technology service is any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:

    (1) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

    (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for a child with disabilities or, if appropriate, the child's family; and

(6) Training or technical assistance for professionals including individuals providing education and rehabilitation services for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

12. 24:05:27:20. Availability of assistive technology. Each public agency shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if they are required as a part of the child's special education or related services or as supplementary aids and services.

Assistive technology devices and services must be provided only if they are required in order for child to receive a free appropriate public education.

13. 24:05:27:21. Transition to preschool program. Each local school district shall develop policies and procedures for the transition of children participating in the early intervention program under Part H of the Individuals with Disabilities Education Act (IDEA) as in effect on November 13, 1992, who are eligible for participation in preschool programs under Part B of IDEA.

Each district's policies and procedures must include the following:

(1) A description of how the families will be included in the transitional plans;

(2) Procedures to be used by the district for notifying the local network in which the child resides of the need for transitional planning;

(3) Procedures for convening, with the approval of the family, a conference between the network, family, and district;

(4) A requirement for convening the conference at least 90 days before the child is eligible for the preschool program under Part B of Individual with Disabilities Education Act as in effect on November 13, 1992; and

(5) Procedures for reviewing a child's program options for the period beginning with the day a child turns three and running through the remainder of the school year including the development of an individual education program consistent with this article.

The district shall provide the family with information on the eligibility and evaluation requirements under Part B of Individual with Disabilities Education Act as in effect on November 13, 1992, including the parents' and district's rights regarding procedural safeguards.

V. PROCEDURAL SAFEGUARDS

Federal Requirement(s)

The state plan must insure the establishment and implementation of procedural safeguards by each public agency inclusive of the requirements of 34 CFR 300.500-515: general responsibilities, opportunity to examine records, independent educational evaluation, prior notice and parent consent, content of notice, impartial due process hearing, impartial hearing officer, hearing rights, hearing decision and appeal, civil action, timelines and convenience of hearings and reviews, child's status during proceedings, surrogate parent and attorneys' fees.

State Standards

SDCL 13-1-11. Department policies and educational rules adopted by state board. The state board of education may adopt such policies as deemed necessary for the government of the division of education and may promulgate such rules pursuant to chapter 1-26 for carrying out such supervisory functions related to elementary and secondary education, post-secondary vocational technical education or vested in the division of education as assigned by this chapter and as elsewhere provided by law.

SDCL 13-37-1.1 Rules governing special education. The state board of education may adopt rules, pursuant to chapter 1-26, governing the education of children in need as follows:

(1) Establishing standards for educational and noneducational programs, public and nonpublic, designed to meet the special needs of children in need of special education or special education and related services;

(2) Establishing appeal procedures for disputes involving the placement or program of a child in need;

(3) Ensuring the performance of such powers and duties as assigned to the board by this chapter and as elsewhere provided by law;

(4) Establishing the qualifications, training, certification, revocation of certification, appointment, provision of services, reporting and monitoring of surrogate parents for children in need.

SDCL 13-37-1.2. Division as agency responsible for special education -- Regulatory and coordinating authority. The division of education of the department of education and cultural affairs is hereby designated as the state agency with responsibility for the education of children in need of special education or special education and related services. In accordance with §13-37-1.1, the division shall have regulatory and coordinating authority over any program within the department of education and cultural affairs, the department of social services or any other state agency insofar as such programs pertain to the special education of children in need of special education or special education and related services.

The division of education through its regulatory authority established under the above statutory provisions has developed administrative rules for informing each public agency of its responsibility for ensuring effective implementation of procedural safeguards for children with disabilities served by the public agency.

Each public agency is required to establish and implement procedural safeguards which meet the requirements of 300.500-515 through the filing of a comprehensive plan with the office of special education as cited in ARSD 24:05:21:01 below. The effective implementation of these provisions is insured through the state's monitoring system (see Appendix E).

ARSD 24:05:21:01. School district must file comprehensive plans -- contents. Each school district must have a current comprehensive plan on file with the office of special education. Districts shall update comprehensive plans every three years and recertify their content annually. Comprehensive plans shall establish compliance with this article and the IDEA, Part B as amended, and must include the following...

(7) Procedural safeguards including the following:
  (a) Opportunity to examine records;
  (b) Independent educational evaluation;
  (c) Prior notice and parent consent;
  (d) Impartial due process hearing;
  (e) Surrogate parent procedures;
  (f) Protection in evaluation procedures; and,
  (g) Procedures for evaluating specific learning disabilities...

Comprehensive plans are annually approved by the office of special education to insure that the standards of the state board of education are being met, including procedural safeguards.

State Plan

1. State administrative rules provide the following procedures regarding opportunity to examine records:

ARSD 24:05:30:02. Opportunity to examine records. The parents of a child in need of special education or special education and related services shall be afforded, in accordance with the procedures in chapter 24:05:29 (confidentiality of information) an opportunity to inspect and review all education records concerning the identification, evaluation, and educational placement of the child and the provisions of a free appropriate public education to the child.

2. State administrative rules regarding procedures for an independent educational evaluation are as follows:

ARSD 24:05:30:03. Independent educational evaluation. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the district. However, the district may initiate a hearing under this chapter to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

If the parent obtains an independent educational evaluation at private expense, the results of the evaluation must be considered by the district in any decision made with respect to the provision of a free appropriate public education to the child and may be presented as evidence at a hearing under this chapter regarding that child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense. If an independent evaluation is made at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the district uses when it initiates an evaluation. Each district shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

For the purposes of this section "independent education evaluation" means an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the child in question. "Public expense" means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

3. State administrative rules for prior notice and parent consent are as follows:

ARSD 24:05:30:04. Prior notice and parent consent. Written notice which meets the requirements of §24:05:30:05 must be given to the parents five days before the district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. The five-day notice requirement may be waived by the parents.

Parental consent must be obtained before conducting a first-time evaluation and before initial placement of a child in a program providing special education or special education and related services.

Except for initial evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child. If a parent refuses to give consent for the child to be evaluated or initially provided special education or special education and related services, the district may use the hearing procedures in this article to determine if the child may be evaluated or initially provided special education or special education and related services without parental consent.

If the hearing officer upholds the district, the district may evaluate or initially provide special education or special education and related services to the child without parental consent, subject to the parent's right to appeal the decision to the courts.

ARSD 24:05:30:05. Content of notice. The notice must include the following:

(1) A full explanation of all of the procedural safeguards available to the parents;

(2) A description of the action proposed or refused by the district, an explanation of why the district proposes or

refuses to take the action, and a description of any options the district considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report that the district uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the district's proposal or refusal, including related services.

ARSD 24:05:30:06. Form of notice. The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the division of education or the local education agency shall take steps to ensure that the notice is translated orally or by other means to the parent in his native language or other mode of communication, that the parent understands the content of the notice, and that there is written evidence that the requirements in this section have been met.

4. State administrative rules on impartial due process hearings are as follows:

ARSD 24:05:30:07. Impartial due process hearing. The school district superintendent or a parent upon notice to the school district superintendent may initiate a hearing on the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education.

The school district shall immediately notify the division of education, office of special education, when a hearing is initiated.

The state superintendent shall appoint an impartial due process hearing officer to conduct the hearing. Either party may request a one-time change in the hearing officer appointed to hear the case. The request must be in writing and submitted to the state superintendent within five working days after receipt of notice of the initial appointment.

ARSD 24:05:30:08. Free or low-cost services to parent. The state director of special education shall inform the parent of any free or low-cost legal and other relevant services available in the area, including the provisions of §1415 of the Handicapped Children's Protection Act, 1986, if the parent or school district initiates a hearing under this section or the parent requests the information.

5. State administrative rule on impartiality of hearing officer is as follows:

ARSD 24:05:30:10. Impartial hearing officer. A hearing may not be conducted by a person who is an employee of a public agency which is involved in the education or care of the child or by any person having a personal, professional or fiscal interest which would create a conflict of interest.

An individual who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

6. State administrative rules regarding hearing rights are as follows:

ARSD 24:05:30:12. Hearing rights. Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing; and

(5) Obtain written findings of fact and decisions. The public agency shall transmit those findings and decisions, after deleting any personally identifiable

information, to the state advisory panel and shall make those findings available to the public.

Parents involved in hearings must be given the right to have the child who is the subject of the hearing present and open the hearing to the public.

7. State administrative rule regarding hearing decisions, timelines, and convenience of hearings is as follows:

ARSD 24:05:30:13. Time limit for and convenience of hearings. The division of education shall ensure that not later than 45 calendar days after the receipt of a request for a hearing a final decision is reached on the hearing and a copy of the decision is mailed to each of the parties. A hearing officer may grant specific extensions of time beyond the 45 day time limit at the request of either party. Each hearing must be conducted at a time and place which is reasonably convenient to the parents and child involved. The hearing decision is final unless a party to the hearing appeals under §24:05:30:11.

8. State administrative rule on civil action is as follows:

ARSD 24:05:30:11. Appeal of hearing decision -- Civil action. Any party aggrieved by the decision of the hearing officer may bring a civil action under the IDEA-B, 20 U.S.C. 1415(e)(i). A civil action may be filed in either state or federal court.

9. State administrative rule regarding child's status during proceedings is as follows:

ARSD 24:05:30:14. Child's status during proceedings. During the pendency of any administrative hearing or judicial proceeding pursuant to this chapter, the child involved must remain in his present educational placement unless the school district and the parents agree otherwise. If the hearing involves an application for initial admission to public school, the child, with consent of the parents, must be placed in the public school program until the completion of all the proceedings. While the placement may not be changed during an administrative or judicial proceeding, unless the school district and parents agree otherwise, this section does not preclude the school district from using its normal procedures for dealing with children who are endangering themselves or others.

10. State administrative rule regarding attorneys' fees is as follows:

ARSD 24:05:30:11.01. Reasonable attorneys' fees. In any action or proceeding brought under 20 U.S.C. 1415(e), the court in its discretion, may award reasonable attorneys' fees under 20 U.S.C. 1415(e)(4) as in effect on November 13, 1992, as part of the cost to the parent or guardian who is the prevailing party. Each public agency shall inform parents of the provisions for attorneys' fees.

11. State administrative rules regarding surrogate parents are as follows:

ARSD 24:05:30:15. Surrogate parents. Each school district shall establish procedures for the assignment of a surrogate parent to ensure that the rights of a child are protected when no parent can be identified and the district, after reasonable effort, cannot discover the whereabouts of a parent or if the child is a ward of the state. At a minimum, a district's method for determining whether a child needs a surrogate parent must include the following:

(1) The identification of staff members at the district or building level responsible for referring students in need of a surrogate parent;

(2) The provision of inservice training on the criteria in this section for determining whether a child needs a surrogate parent; and

(3) The establishment of a referral system within the district for the appointment of a surrogate parent.

Surrogate parents shall be appointed by the district superintendent or designee.

The district shall ensure that a person selected as a surrogate has no interest that conflicts with the interest of the child he represents and has knowledge and skills that ensure representation of the child. The district is responsible for training and certification of the surrogate parents, including maintaining a list of qualified people who serve as surrogate parents.

A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child.

A person who otherwise qualifies to be a surrogate under the provisions of this section is not an employee of the agency solely because he is paid by the agency to serve as a surrogate parent.

A surrogate parent may represent the child in all matters relating to the identification, evaluation, educational placement of the child, and the provision of a free appropriate public education to the child.

The district superintendent or designee is responsible for reporting to the placement committee on the performance of the surrogate parent.

ARSD 24:05:30:16. Continuation as surrogate parent. An individual assigned as a surrogate parent shall continue in that capacity as long as the child meets the following conditions:

(1) Remains eligible for special education or special education and related services;

(2) Meets the criteria for the appointment of a surrogate parent or unless the person appointed as a surrogate parent fails to represent the best interest of the child; and

(3) Remains a resident of the placing district.

Removal of an individual as a surrogate parent shall be accomplished by the district superintendent or designee.

VI. CONFIDENTIALITY

Federal Requirement(s)

The policies and procedures which the state will undertake or has undertaken in order to ensure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part. The U.S. Secretary shall use the criteria in §§300.560-300.575 to evaluate the policies and procedures of the state under this section.

State Standards

ARSD 24:05:21:01. School district must file comprehensive plans - contents. Each school district must have a current comprehensive plan on file with the office of special education. Districts shall update comprehensive plans every three years from filing and recertify their content annually.

Comprehensive plans shall establish compliance with this article and the IDEA, Part B, as amended, and shall include the following:

... (6) Policies and procedures on confidentiality of information ...

ARSD 24:05:29:01. District policies and procedures on confidentiality of information. Each school district shall develop and implement policies and procedures on the confidentiality of information consistent with this chapter.

ARSD 24:05:29:02. Definitions. The following definitions apply to this chapter only:

(1) "Act," the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 438 of the General Education Provisions Act as in effect April 11, 1988;

(2) "Attendance," presence in person or by correspondence; the period during which a person is working under a work-study program;

(3) "Directory information," information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed, such as the student's name, address, telephone

listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended;

(4) "Disclosure," to permit access to or the release, transfer, or other communication of education records or the personally identifiable information contained in those records to any party, by any means, including oral, written, or electronic;

(5) "Education records," records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include the following:

(a) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(b) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit and the law enforcement records are maintained separately from education records, maintained solely for law enforcement purposes, and disclosed only to law enforcement officials of the same jurisdiction;

(c) Records related to an individual who is employed by an educational agency or institution that are made and maintained in the normal course of business, are related exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose. Records relating to an individual in attendance at the agency or institution who is employed as a result of his status as a student are educational records and not excepted under this subdivision;

(d) Records on a student who is 18 years of age or older or is attending an institution of postsecondary education that are made or maintained by as physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional capacity or assisting in a paraprofessional capacity; made, maintained, or used only in connection with treatment of the student; and disclosed only to individuals providing the treatment. For the purpose of this section, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(e) Records that only contain information about an individual after he or she is no longer a student at that agency or institution;

(6) "Eligible student," a student who has reached 18 years of age or is attending an institution of postsecondary education;

(7) "Institution of postsecondary education," an institution that provides education to students beyond the secondary school level;

(8) "Secondary school level," the educational level, not beyond grade twelve, at which secondary education is provided as determined under state law;

(9) "Personally identifiable information," the student's name, the name of the student's parent or other family member, the address of the student or student's family, a personal identifier, such as the student's social security number or student number, and a list of personal characteristics or other information that would make the student's identity easily traceable; and

(10) "Record," any information recorded in any way, including handwriting, print, tape, film, microfilm, and microfiche.

ARSD 24:05:29:03. Annual notification of rights. Each school district shall annually notify parents of students currently in attendance and eligible students currently in attendance at the agency or institution of their rights under the Act and this chapter. The notice must include a statement that the parent or eligible student has a right to do the following:

(1) Inspect and review the student's education records;

(2) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

(3) Consent to disclosure of personally identifiable information contained in the student's education records, except to the extent that the Act and the regulations in this chapter authorize disclose without consent;

(4) File with the U.S. department of education a complaint concerning alleged failures by the agency or institution to comply with the requirements of the Act and this chapter; and

(5) Obtain a copy of the district's policy.

The notice provided under this section must also indicate the placed where copies of the district's policy are located.

The district may provide this notice by any means that are likely to inform the parents and eligible students of their rights and that will effectively notify parents of students who have a primary or home language other than English.

ARSD 24:05:29:04. Access rights. Each school district shall permit parents to inspect and review any education records relating to their student which are collected, maintained, or used by the agency under this chapter. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individual education program or hearing relating to the identification, evaluation, or placement of the student, and in no case more than 45 calendar days after the request has been made.

The right to inspect and review education records under this section includes the following:

(1) The right to response from the district to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the district provide copies of the records containing the information if failure to provide these copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

The district may presume that the parent has authority to inspect and review records relating to his child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, divorce, or custody.

ARSD 24:05:29:05. Record of access. Each school district shall keep a record of parties obtaining access to education records collected, maintained, or used under this chapter, except access by parents and authorized employees of the district, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. A parent or eligible student may inspect this record on request.

ARSD 24:05:29:06. Records on more than one child. If an education record includes information on more than one child, the parents of those children may inspect and review only the information relating to their child or to be informed of that specific information.

ARSD 24:05:29:07. List of types and locations of information. Each school district shall provide parents on request a list of the types and location of education records collected, maintained, or used by the district.

ARSD 24:05:29:08. Fees. A school district may charge a fee for copies of records which are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. The district may not charge a fee to search for or to retrieve information under this chapter.

ARSD 24:05:29:09. Amendment of records at parent's request. A parent who believes that information in education records collected, maintained, or used under this article is inaccurate or misleading or violates the privacy or other rights of the student may request the district which maintains the information to amend the information.

The district shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

If the district decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing.

ARSD 24:05:29:10. Opportunity for a hearing. The district shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

ARSD 24:05:29:11. Hearing procedures. At a minimum, a district's hearing procedures must include the following elements:

(1) The hearing must be held within 30 days after the district received the request, and the parent of the student or eligible student shall be given notice of the date, place, and time 5 days in advance of the hearing;

(2) The hearing may be conducted by any party, including an official of the district, who does not have a direct interest in the outcome of the hearing;

(3) The parent of the student or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised and may be assisted or be represented by individuals of his choice at his own expense, including an attorney;

(4) The district shall make its decision in writing within 30 days after the conclusion of the hearing; and

(5) The decision of the district shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

ARSD 24:05:29:12. Result of hearing. If, as a result of the hearing, the district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and inform the parents in writing.

If, as a result of the hearing, the district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parents of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the district.

Any explanation placed in the records of the student under this section must be maintained by the district as part of the records of the student as long as the record or contested portion is maintained by the district. If the records of the student or the contested portion is disclosed by the district to any party, the explanation must also be disclosed to the party.

ARSD 24:05:29:13. Consent. Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of the district collecting or using the information under this article or used for any purpose other than meeting a requirement under this chapter. The district may not release information from education records to participating agencies without parental consent except as follows:

(1) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is to other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests or to officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in subdivision (2) of this section; and

(2) An educational agency or institution that discloses the education records of a student pursuant to subdivision (1) of this section shall make a reasonable attempt to notify the parent of the student or the eligible student

at the last known address of the parent or eligible student, except when the disclosure is initiated by the parent or eligible student.

If the agency or institution includes in its annual notice of parent's rights that it is the policy of the public agency to forward education records on request to a school in which a student seeks or intends to enroll, then the public agency does not have to provide any further notice of the transfer of records.

An educational agency receiving personally identifiable information from another educational agency or institution may make further disclosures of the information on behalf of the educational agency without the prior written consent of the parent or eligible student if the conditions of subdivisions (1) and (2) of this section are met and if the educational agency informs the party to whom disclosure is made of these requirements. If the parents refuse consent for the release of personally identifiable information to a third party, that party may proceed with statutory procedures in an effort to obtain the desired information.

ARSD 24:05:29:14. Safeguards. Each school district shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official in the district shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding the provisions of this chapter concerning personally identifiable information.

Each district shall maintain for public inspection a current listing of the names and positions of those employees within the district who may have access to personally identifiable information on students in need of special education or special education and related services.

ARSD 24:05:29:15. Destruction of information. The school district shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the student.

The information no longer needed must be destroyed at the request of the parents. However, a permanent record of the student's name, address, and phone number, the student's grades, attendance record, classes attended, and grade level completed may be maintained without time limit.

ARSD 24:05:29:16. Children's rights. All of the parental [illegible] this chapter are extended to the child upon reaching the age [illegible] unless the child has been declared incompetent by the courts.

ARSD 24:05:29:17. Enforcement. The division of education, office of special education, shall ensure that all school districts in this state comply with the requirements on confidentiality of information through on-site monitoring, approval of comprehensive plans, and complaint resolution. Sanctions for noncompliance include the disapproval of local special education programs and the withholding of state and federal funds.

State Plan

The Division of Education, Office of Special Education reaffirms policies and procedures insuring confidentiality of information consistent with regulations implementing the Individuals with Disabilities Education Act, Part B and the Family Education Rights and Privacy Act (IDEA-B and FERPA). Items and procedures included in the policy are:

1. Each public agency shall notify parents about the requirements related to the confidentiality of information.

The notice will include:

(a) A description of the extent to which notice is given in native language or population of groups in the state;

(b) A description of children on whom personally identifiable information is maintained;

(c) The types of information sought;

(d) The methods which the state uses in gathering the information, including sources from whom the information is gathered;

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(e) Uses made of the information;

(f) A summary of policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention and destruction of personally identifiable information; and

(g) A description of all of the rights of parents and children regarding this information under section 438 of the General Education Provisions Act and Part 99 of this title (FERPA).

In accordance with ARSD 24:05:21:01 Comprehensive Plans, and ARSD 24:05:29:01, local districts must develop and implement policies and procedures on the confidentiality of student information. Pursuant to ARSD 24:05:22:02, district procedures on child identification must include information on the collection, maintenance, and reporting of data regarding child identification and maintain documentation on such activities.

Additionally, ARSD 24:05:29:03, annual notification of rights, requires districts to annually notify parents of students currently in attendance and eligible students currently in attendance at the agency or institution of their right under the (IDEA-B) Act and state rules governing confidentiality of information.

2. Before to any major identification, location, or evaluation activity, a notice such as the one described in number 1 above must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

Again, districts must have policies and procedures describing their child identification efforts pursuant to ARSD 24:05:21:01. Specifically, districts must have a written description of annual public awareness campaigns for informing parents and other interested parties of child identification efforts pursuant to ARSD 24:05:22:02.

3. Pursuant to ARSD 24:05:30:02, opportunity to examine records, agencies shall permit parents to inspect and review any educational records relating to their children which are collected, maintained, or used by the agency:

The parents of a child in need of special education or special education and related services shall be afforded, in accordance with the procedures in ARSD 24:05:29, (confidentiality of information) an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public eduction for the child.

This obligation is reinforced through ARSD 24:05:29:04, access rights.

4. In accordance with ARSD 24:05:29:04, the right to inspect and review education records includes:

   (a) Provisions that a participating agency responds to reasonable requests for explanations and interpretations of records;

   (b) Provisions that the participating agency provides copies of records containing the information if failure to provide copies would effectively prevent parents from exercising the right to inspect and review records; and

   (c) Provisions that representatives of the parent have the right to inspect and review records;

   (d) As previously cited in number 3 above, ARSD 24:05:30:02 affords parents an opportunity to review all records related to the identification, evaluation and placement of a child and of the provision of FAPE.

5. If a parent requests to inspect or review records in accordance with the provisions of item 4 above, the agency involved will:

   (a) Comply with the request before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child; and

   (b) Complies with the request within no more than 45 days.

This item is supported by ARSD 24:05:29:04. Access rights.

6. Also in accordance with ARSD 24:05:29:04, school districts or other agencies may presume that the parent has the authority to inspect or review records relating to his or her child unless the district or agency has been advised that the parent does not have authority under state law governing such matters as guardianship, separation or divorce.

7. Pursuant to ARSD 24:05:29:05, record of access, school district and other agencies will keep a record of parties obtaining access to educational records collected, maintained, or used under the IDEA-B, except for authorized employees of the school district or agency, and parents.

8. ARSD 24:05:29:05 also requires school districts or agencies to include in records of access:

    (a) Name of the party;

    (b) Date access was given; and

    (c) The purpose for which a party was authorized to use the records.

9. In accordance with ARSD 24:05:29:06, records on more than one child, parents have the right to:

    (a) Inspect and review only the information relating to their child; or

    (b) Be informed of that specific information.

10. School districts and other agencies shall provide to parents upon request a list of the types and locations of education records collected, maintained, or used by the agency or district, pursuant to ARSD 24:05:29:07, list of types and locations of information.

11. School districts and other agencies may charge a fee for copies of records if the fee does not effectively prevent parents from exercising their rights to inspect and review records, but they may not charge a fee to search

for or retrieve information. Support for this item is found in ARSD 24:05:29:08.

12. In accordance with ARSD 24:05:29:09. Amendment of records at parent request. A parent who believes that information in education records is inaccurate, misleading, or violates the rights of the child may request that the school district or agency amend the records.

13. In keeping with the requirements of ARSD 24:05:29:09, if a district or agency receives a parental request to amend the record, it may:

    (a) Decide to amend the information in accordance with the request within a reasonable period of time; or

    (b) Refuse to amend the information and inform the parent of the refusal; and

    (c) Advise parents of hearing rights in the case of agency/district refusal to amend records.

14. ARSD 24:05:29:10 requires school districts or agencies to provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

15. If, as a result of the hearing, the school district or agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or rights of the child, it shall amend the information accordingly and so inform the parent in writing.

16. Conversely, if the school district or agency decides as a result of the hearing the information is not inaccurate, misleading, or otherwise in violation of the privacy or rights of the child, it shall inform the parents of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

17. Further, any explanation placed in the records of the child must:

    (a) Be maintained by the agency as part of the record as long as the record or contested portion is maintained by the agency; and

    (b) If records of the child or the contested portion is disclosed by the district/agency to any party, the explanation must also be disclosed to the party.

    ARSD 24:05:29:12, result of hearing, includes and supports the procedures described in items 15, 16, and 17.

18. Hearings conducted in regard to student records will be conducted in accordance with the procedures set forth under section 99.22 of the Family Educational Rights and Privacy Act (FERPA). Hearing procedures are described in ARSD 24:05:29:11.

19. Parental consent must be obtained before personally identifiable information is:

    (a) Disclosed to anyone other than officials of participating agencies collecting or using this information; and

    (b) Used for any purpose other than meeting a requirement under the IDEA-B.

20. Subject to Part 99 (FERPA), an educational agency or institution may not release information from educational records to participating agencies without parental request, unless otherwise authorized to do so.

21. Educational agencies or institutions have access to statutory procedures (SDCL 1-26) in an effort to obtain desired information in the event of parental refusal to consent to disclose information.

    ARSD 24:05:29:13, consent, includes and supports procedures described in items 19, 20, and 21.

22. In accordance with ARSD 24:05:29:14, safeguards, school districts and other agencies shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

23. ARSD 24:05:29:14 also requires districts and agencies to identify an official who has the responsibility for ensuring the confidentiality of any personally identifiable information.

24. Further, the above referenced rule requires that all persons collecting or using personally identifiable information must receive training or instruction regarding policies and procedures concerning personally identifiable information.

25. Finally, ARSD 24:05:29:14 requires each school district or agency to maintain, for public inspection, a current listing of names and positions of those employees within the district or agency who may have access to personally identifiable information.

26. Pursuant to ARSD 24:05:29:15, destruction of information, school districts and agencies shall inform parents when personally identifiable information collected, maintained, or used under this section is no longer needed to provide educational services to the child.

27. ARSD 24:05:29:15 also requires that information must be destroyed at the request of parents. Exceptions to this include the student's name, address, telephone number, grades, attendance records, classes attended, grade level completed, and year completed. This information may be maintained without time limitation.

28. ARSD 24:05:29:16 describes the extent to which children are afforded the rights of privacy similar to those afforded to parents:

> All of the above parental rights (referencing chapter 24:05:29) are extended to the child upon reaching the age of eighteen unless the child has been declared incompetent by the courts.

29. The following rule describes the methods which the state agency uses to insure its policies and procedures are followed by school districts and other agencies and that the requirements of IDEA-B and it's implementing regulations are met:

ARSD 24:05:29:17. Enforcement. The division of education, office of special education, shall insure that all school districts within the state of South Dakota comply with the requirements of confidentiality of information through onsite monitoring, approval of comprehensive plans and complaint resolution. Sanctions for noncompliance include, but are not limited to the disapproval of local special eduction programs and the withholding of state and federal funds. The state agency monitoring system is included as Appendix E.

VII. LEAST RESTRICTIVE ENVIRONMENT

Federal Requirement(s)

The state plan must include procedures which insure that each public agency provides special education or special education and related services in accordance with the least restrictive environment provision as per 34 CFR 300.550-556: general provisions, continuum of alternative placements, placements, non-academic settings, children in public or private institutions, technical assistance and training activities, and state education agency monitoring.

State Standards

SDCL 13-37-1.1. Rules governing special education. The state board of education may adopt rules pursuant to chapter 1-26 governing the education of children in need as follows:

(1) Establishing standards for educational and noneducational programs, public and nonpublic, designed to meet the special needs of children in need of special education or special education and related services;

(2) Establishing appeal procedures for disputes involving the placement or program of a child in need;

(3) Ensuring the performance of such powers and duties as assigned to the board by this chapter and as elsewhere provided by law; and,

(4) Establishing the qualifications, training, certification, revocation of certification, appointment, provision of services, reporting and monitoring of surrogate parents for children in need.

SDCL 13-37-1.2. Division as agency responsible for special education - Regulatory and coordinating authority. The division of education of the department of education and cultural affairs is hereby designated as the state agency with responsibility for the education of children in need of special education or special education and related services. In accordance with §13-37-1.1, the division shall have regulatory and coordinating authority over any program within the Department of Education and Cultural Affairs, the department of social services or any other state agency insofar as such programs pertain to the special education of children in need of special education or special education and related services.

SDCL 13-37-14. Rules governing implementation of program - Regulation by division. The state board of education may adopt rules to implement a special education program in accordance with §13-37-1.1 for the state under the regulation of the division of education.

SDCL 13-37-14.1. District to provide appropriate program. The school board shall provide all of its resident children in need with an appropriate educational program.

ARSD 24:05:13:01. Definitions.

(7) "Day school program," a specialized program provided in a facility, a school district, or a cooperative center that a child attends during the day, returning home at night;

(12) "Least restrictive environment," a learning environment for a child in need of special education or special education and related services, including a child placed in a public or private institution or another care facility, that includes to the maximum extent appropriate children who are not in need of special education or special education and related services, as determined through the child's individual educational program;

(17) "Residential school program," an approved specialized program provided in a facility that a child attends 24 hours a day;

(19) "Self-contained program," a specialized instructional environment for eligible children in need of special education or special education and related services who require intensive instructional procedures;

ARSD 24:05:35:01. District of residence responsible for educational program in juvenile detention facility. A school district containing a juvenile detention facility is responsible for providing a full appropriate educational program for children and youth assigned to the facility by the court.

ARSD 24:05:35:02. Educational agreement between juvenile detention facility and school district of residence. A cooperative agreement between the juvenile detention facility and the affected school district shall describe the educational program which will assist the court in rehabilitating the juvenile and describe the management of the juveniles' educational program.

State Plan

The state education agency maintains its policy that all children in need of special education or special education and related services are provided such programs in accordance with the least restrictive environment provisions of federal and state regulations. Items included in this policy are:

1. Local educational agencies shall establish and maintain procedures which insure that:

    (a) To the maximum extent appropriate children with disabilities, including children in public or private institutions or other care facilities are educated with children who are not disabled; and

    (b) Special classes, separate school or other removal from the regular educational environment occurs only when education in regular classes with supplementary aids and services cannot be achieved satisfactorily.

ARSD 24:05:28:01 mandates the provision of least restrictive environment:

> Children in need of special education or special education and related services shall be provided special programs and services to meet with individual needs which are coordinated with the regular educational program whenever appropriate. Removal from the regular educational classroom shall occur only when the nature or severity of the child's needs is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Further, LEAs must submit to the state educational agency comprehensive plans for review and approval. The plans must address the area of least restrictive environment pursuant to ARSD 24:05:21:01:

> Each school district must have a current comprehensive plan on file with the office of special education. Districts shall

update comprehensive plans every three years from filing and recertify their content annually.

Comprehensive plans shall establish compliance with this article and the IDEA, Part B, as amended, and shall include the following:

... (5) Procedures for least restrictive environment;...

2. Local education agencies shall provide a continuum of alternative placements to meet the needs of children in need of special education or special education and related services:

ARSD 24:05:28:02. Continuum of alternative placements. Alternative placements which must be made available include:

(1) Regular educational programs with modifications;

(2) Resource room;

(3) Self-contained programs;

(4) Day school programs;

(5) Residential school programs;

(6) Home and hospital programs; and,

(7) Other settings.

For each of the programs listed above, the placement committee shall determine the extent to which related services are required in order for the child to benefit from the program, and the length of the school day which shall be equal in duration to that of a regular public school day unless an adjusted school day is required in order to meet the individual needs of the child. The committee shall make provisions for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement, when appropriate.

In those cases where placement is made in a day or residential school program, the district may abide by the school term of the facility in which the child is placed.

3. The following state administrative rules describe procedures for providing or arranging for nonacademic and extracurricular services and activities such that LEAs insure that children in need of special education or special education and related services participate with other children to the maximum extent appropriate to the needs of that child:

ARSD 24:05:28:04. Program Options. Each school district shall take steps to ensure that its children in need of special education or special education and related services have available to them the variety of educational programs and services available to non-disabled children in the area served by the district including, but not limited to, art, music, industrial arts, consumer and homemaking education, and vocational education.

ARSD 24:05:28:05. Nonacademic and extracurricular services. Each school district shall take steps to provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford children in need of special education or special education and related services an equal opportunity for participation in these activities. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to agencies which provide assistance to persons with disabilities, employment of students, including both employment by the district and assistance in making outside employment available.

ARSD 24:05:28:06. Nonacademic settings. In providing or arranging for the provision of nonacademic services and activities, including meals, recess periods, and the services and activities listed in this chapter, each school district shall develop and implement procedures which insure that each child in need of special education or special education and related services participates with non-disabled children in those services and activities to the maximum extent appropriate to the needs of that child.

4. In implementing the requirements of this section for children placed in private or public institutions, LEAs shall abide by the following procedure:

ARSD 24:05:28:07. Children in public or private institutions: Each school district through its placement committee and individual education program procedures, shall insure that children placed in public or private institutions or other care facilities are educated with children who are not disabled to the maximum extent appropriate.

5. Activities to be carried out during FY 96-98 to insure that teachers and administrators are: 1) fully informed of their responsibility for implementation of the provisions of least restrictive environment, and 2) provided technical assistance and training for this purpose include:

   (a) The state agency shall provide technical assistance to LEAs and other agencies who are determined to be out of compliance with regulations governing least restrictive environment as a result of monitoring.

   (b) The area of least restrictive environment will continue to be a priority in developing the state's comprehensive system of staff development. For example, statewide staff development activities such as the annual special education "Summer Institute", Special Education Director's Conference/Special Needs Conference, and Special Education Law and Practice Conference will feature inservice sessions on various aspects of least restrictive environment. Promising practices and significant research on the topic will be disseminated statewide through such publications as the Division of Education Challenge, Counterpoint, and Hi-Lites in South Dakota Special Education.

   (c) The state education agency will identify a portion of its "20% set-aside" of Part B funds for release to LEAs and other agencies on an RFP (request for proposal) basis with one priority being least restrictive environment.

   (d) The state education agency will continue to implement its Personnel Preparation initiative which is designed to provide all elementary education majors an inclusive elementary and special education preparation program. The intent of the initiative is:

      (1) To challenge teachers and other school personnel to collaborate across traditional discipline lines;

      (2) To challenge university faculty to begin designing a teacher education program that incorporates a

variety of innovative teaching practices that are supported by research; and,

(3) To provide Professional Development Schools for field experience and support the inclusive teacher education program.

The goals for the Inclusive Elementary and Special Education Preparation Program are:

(1) Develop and implement a fully inclusive undergraduate program that involves all elementary education majors in a unified program of study leading to dual certification; and,

(2) Develop and support Professional Development Schools in order to provide a core of potential placement options for those students participating in field experiences.

6. The state education agency, through the LEAs and other agencies serving children in need of special education or special education and related services, insure the following:

ARSD 24:05:28:03. Factors in determining placements. Each school district shall establish and implement procedures which ensure that the following factors are addressed in determining placements:

(1) Each child's educational placement shall be individually determined at least annually and based on the child's individualized education program;

(2) Provisions are made for appropriate classroom or alternative settings necessary to implement a child's individual education program;

(3) Except where a child's individualized education plan requires some other arrangement, the child shall be educated in the school which that child would normally attend if not disabled. Other placement shall be as close as possible to the child's home; and

(4) Placement in the least restrictive environment provision will not provide a harmful effect on the child or reduce the quality of services which that child needs.

Placement decisions will not be based on any one of the following factors alone or in combination:

(a) Category of disabling condition;

(b) Configuration of the school's service delivery system;

(c) Availability of special education or special education and related services;

(d) Availability of space; and,

(e) Curriculum content or methods of curriculum delivery.

The placement committee shall recommend placement of a child in general education settings unless it determines through the process described above, that curriculum and instructional methodologies as stated in the IEP cannot be implemented in general education settings.

When a child in need of special education or special education and related services is placed in other than general education settings, a chronologically age appropriate placement shall be provided.

7. Implementation of the provisions of least restrictive environment by LEAs is monitored by the state education agency in two ways: 1) review and approval of procedures described in the local comprehensive plan, and 2) onsite compliance monitoring (See Appendix D and E). If there is evidence that a public agency makes placements that are inconsistent with the LRE requirements the state educational agency:

(1) Shall review the public agency's justification for its actions, and,

(2) Shall assist in planning and implementing any necessary corrective action.

8. The state administrative rule applicable to instruction in "other settings" is as follows:

ARSD 24:05:13:01(20) "Special education", instruction specially designed to meet the unique needs of a student with disabilities, at no cost to parents or guardians, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals, institutions, and other settings.

VIII. PROTECTION IN EVALUATION PROCEDURES

Federal Requirement(s)

The state plan must insure that each public agency will establish and implement procedures pursuant to 34 CFR 300.530-300.534: general requirements, preplacement evaluation, evaluation procedures, placement procedures, and reevaluation.

State Standards

SDCL 13-37-1. Children in need of special education or special education and related services. As used in this chapter, "children in need of special education or special education and related services" means any person under the age of twenty-one years who is a resident of the state of South Dakota and who, because of his educational needs as defined by the state board of education in rules promulgated pursuant to chapter 1-26 and this chapter, is not adequately provided for through the usual facilities and services of the school and requires special education.

SDCL 13-37-4. Need evidenced by certificate of qualified person. In order for a child in need to receive the benefits provided herein, the nature of the need must be evidenced by a certificate of a qualified person or persons as defined by the state board of education and by such information furnished to the division.

SDCL 13-37-14.1. District to provide appropriate program. The school board shall provide all of its resident children in need with an appropriate educational program.

ARSD 24:05:13:01. Definitions.

(11) "Individual education program," a written educational program for a specific individual, in accordance with §24:05:27:01, based on the multidisciplinary evaluation and developed by a local school placement committee.

(13) "Multidisciplinary evaluation," is an individual evaluation of student needs in all areas related to the student's suspected disability including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

ARSD 24:05:21:01. School district must file comprehensive plans contents. Each school district must have a current comprehensive plan on file with the office of special education. Districts shall update comprehensive plans every three years from filing and recertify their content annually.

Comprehensive plans shall establish compliance with this article and the IDEA, Part B, as amended, and shall include the following:

... (7) Procedural safeguards, to include:
- (a) Opportunity to examine records;
- (b) Independent educational evaluation;
- (c) Prior notice and parent consent;
- (d) Impartial due process hearing;
- (e) Surrogate parent procedures;
- (f) Protection in evaluation procedures; and
- (g) Procedures for evaluating specific learning disabilities ...

ARSD 24:05:23:01. Educational evaluator. An educational evaluator must possess a valid teaching certificate and must have training in individual and group tests to be administered.

ARSD 24:05:23:02. Psychological evaluator. A psychological evaluator must be a school psychologist certified by the division of education or a school psychological examiner certified by the division of education. A school psychological examiner's report must be cosigned by a certified school psychological examiner.

ARSD 24:05:23:03. Psychiatric evaluator. A psychiatric evaluator must be a psychiatrist licensed by the state board of medical and osteopathic examiners.

ARSD 24:05:23:04. Language, speech or hearing evaluator. A language, speech, or hearing evaluator must have a valid South Dakota certificate as a speech and language therapist.

ARSD 24:05:23:05. Audiological evaluator. An audiological evaluator must have a valid South Dakota certificate as a school audiologist.

ARSD 24:05:23:06. Medical evaluator. A medical evaluator must be licensed by the state board of medical and osteopathic examiners.

ARSD 24:05:23:07. Occupational therapy evaluator. An occupational therapy evaluator must be licensed by the state board of medical and osteopathic examiners.

ARSD 24:05:23:08. Physical therapy evaluator. A physical therapy evaluator must be licensed by the state board of medical and osteopathic examiners.

ARSD 24:05:23:09. Vision evaluators. A vision evaluator must be an opthamologist licensed by the state board of medical and osteopathic examiners or an optometrist licensed by the state board of optometry.

State Plan

The Division of Education, Office of Special Education reaffirms the policy that each public agency will establish and implement procedures that meet federal requirements for protection of children in need of special education or special education and related services during the evaluation process. Provisions for implementation of this policy include the following:

1. ARSD 24:05:25:01 establishes LEA responsibilities for protection in evaluation:

   Each school district shall establish and implement procedures which meet the requirements of this chapter, including nondiscriminatory practices, initial evaluation, evaluation procedures, placement procedures, and reevaluation.

2. ARSD 24:05:25:02. Nondiscriminatory practices. Testing and evaluation materials and procedures used for the purpose of evaluation and placement of children with disabilities must be selected and administered so as not to be racially or culturally discriminatory.

3. Prior to any action taken, ARSD 24:05:25:03 states:

   Before any action is taken with respect to the initial placement of a child with disabilities in a special education program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of this section. Evaluations shall be completed within twenty-five school days of receipt by district of parent permission to evaluate unless other timelines are agreed to by school administration and parents.

4. Pursuant to ARSD 24:05:25:04, the state agency and LEAs insure, at a minimum, that:

    (1) Tests and other evaluation materials:

        (a) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

        (b) Have been validated for the specific purpose for which they are used; and,

        (c) Are administered by trained personnel in conformance with the instructions provided by their producer;

    (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

    (3) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills except where those skills are the factors which the test purports to measure;

    (4) No single procedure is used as the sole criterion for determining an appropriate educational program for a child;

    (5) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability; and,

(6) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

5. The state education agency requires LEAs to implement the following items stated in ARSD 24:05:25:05:

In interpreting evaluation data and in making placement decisions, each school district shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Insure that information obtained from all of these sources is documented and carefully considered;

(3) Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and,

(4) Insure that the placement decision is made in conformity with the least restrictive environment rules.

Additionally, LEAs will document information obtained from sources listed in item (1) above.

6. ARSD 24:05:25:05 further states that:

... If a determination is made that a child is disabled and needs special education and related services, an individualized education program must be developed for the child in accordance with these rules. (see ARSD Chapter 24:05:27, Individual Education Program).

7. The state education agency insures that each LEA reviews each child's IEP through the following:

ARSD 24:05:27:08. Yearly review and revision of individual educational programs. Each school district

IX. RESPONSIBILITY OF SEA FOR EDUCATION PROGRAMS

Federal Requirement(s)

1. The plan includes information which shows the requirements in §300.600 of Subpart F are met. (The information must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other document that shows compliance with this requirement.)

2. The State educational agency is responsible for ensuring:

    (1) That the requirements of this part are carried out; and,

    (2) That each educational program for children with disabilities administered within the State, including each program administered by any other public agency;

    (i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency, and,

    (ii) Meets education standards of the State educational agency (including the requirements of this part).

3. The State must comply with paragraph (1) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

4. This part may not be construed to limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of a free appropriate public education for children with disabilities in the State.

State Standards

SDCL 13-37-1.1. Rules governing special education. The state board of education may adopt rules pursuant to chapter 1-26 governing the education of children in need as follows:

(1) Establishing standards for educational and noneducational programs, public and nonpublic, designed to meet the special needs of children in need of special education or special education and related services;

(2) Establishing appeal procedures for disputes involving the placement or program of a child in need;

(3) Ensuring the performance of such powers and duties as assigned to the board by this chapter and as elsewhere provided by law; and,

(4) Establishing the qualifications, training, certification, revocation or certification, appointment, provision of services, reporting and monitoring of surrogate parents for children in need.

SDCL 13-37-1.2. Division as agency responsible for special education -- Regulatory and coordinating authority. The division of education of the department of education and cultural affairs is hereby designated as the state agency with responsibility for the education of children in need of special education or special education and related services. In accordance with §13-37-1.1, the division shall have regulatory and coordinating authority over any program within the department of education and cultural affairs, the department of social services or any other state agency insofar as such programs pertain to the special education of children in need of special education or special education and related services.

SDCL 13-37-8.6. Auxiliary services provided - Rates - Payment from district fund - Exception - District to pay deductible and advance payment. The state board shall adopt rules specifying which of the various types of auxiliary services may be provided to any school district's students by other schools, agencies or individuals. Rates for auxiliary service shall be negotiated with individual agencies and approved by the division of education annually. Such charges shall be paid from the school district's special education fund.

The costs for auxiliary or other related services as defined in rule adopted by the state board, may not be paid by the school district when those services are covered and available from accident and health insurers, nonprofit medical and surgical plans, health maintenance organizations, fraternal benefit societies or federally reimbursed program sources. Expenses for auxiliary or other related services shall not be borne by the parent. In addition, the filing of claims shall not delay the education of a child. A school district shall be responsible for payment of deductible amount and for an advance payment required until the time a claim is paid.

ARSD 24:05:14:01. Development and implementation of interagency agreements - financial responsibility, dispute resolution, and reimbursement procedures. The division of education shall develop and implement interagency agreements with the departments of social services, health, vocational rehabilitation, and court services for the purpose of describing the role that each of these agencies plays in providing or paying for special education or related service for children with disabilities. These interagency agreements shall define the financial responsibility of each agency for providing children with disabilities with free appropriate public education, establish procedures for resolving interagency disputes among agencies that are parties to the agreement and establish procedures under which local educational agencies may initiate procedures in order to secure reimbursement from agencies that are parties to the agreement or otherwise implement the provisions of the agreement.

This section does not allow any agency to reduce medical and other assistance available to children with disabilities or to alter a child's eligibility under Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, to receive services that are also part of a free appropriate public education.

ARSD 24:05:21:03. Comprehensive plans serve as district's application of Part B funds. The information required in a district's comprehensive plan coupled with statements of expenditures, descriptions of the annual use of Part B funds, and certification of federal assurances shall constitute a local education application for funds under, Part B.

ARSD 24:05:21:01. School district must file comprehensive plans - contents. Each school district must have a current comprehensive plan on file with the office of special education. Districts shall update comprehensive plans every three years from filing and re-certify their content annually.

Comprehensive plans shall establish compliance with this article and the IDEA, Part B as amended, and shall include the following:

(1) Full program services goals and procedures, including a timetable for accomplishing the goals and a description of the kind and number of facilities, personnel, and services necessary to meet the goals;

(2) Ongoing child identification procedures;

(3) Referral, evaluation, and placement procedures;

(4) Procedures for the development and annual review of the individual educational program for each child;

(5) Procedures for least restrictive environment;

(6) Policies and procedures on confidentiality of information;

(7) Procedural safeguards, to include:

  (a) Opportunity to examine records;

  (b) Independent educational evaluation;

  (c) Prior notice and parent consent;

  (d) Impartial due process hearing;

  (e) Surrogate parent procedures;

  (f) Protection in evaluation procedures; and,

  (g) Procedures for evaluating specific learning disabilities.

(8) Procedures for private school placement;

(9) Procedures for voluntary enrollment in nonpublic schools;

(10) Procedures for parent involvement in meeting the full program services goals of the district;

(11) Staff development procedures for the implementation and use of the comprehensive system of personnel development established by the division of education;

(12) Procedures for the employment of special education personnel who have the special education endorsement as required in section 24:02:03:21 or 24:02:03:21:01; and,

(13) Policy on the provision of facilities, materials, and equipment used for special education being comparable to those used in regular education.

ARSD 24:05:20:03. Review and approval process. Applications submitted to the division of education shall be reviewed by the office of special education for consistency with the IDEA, Part B requirements.

ARSD 24:05:20:04. Additional requirements. In addition to the content requirements of the application itself, reviewers shall take into account a local education agencies failure to correct an identified deficiency found through state monitoring or a complaint investigation, consider any decision made in a due process hearing which is adverse to the local education agency, and consider any previous decisions that resulted in the withholding of funds.

ARSD 24:05:20:18. Program monitoring and evaluation. In conjunction with its general supervisory responsibility under the IDEA, Part B, the division of education, office of special education, shall monitor agencies, institutions, and organizations responsible for carrying out special education programs in the state, including any obligations imposed on those agencies, institutions, and organizations under law.

ARSD 24:05:20:19. Collection and analysis of data. The division shall collect and analyze information sufficient to identify any deficiency of a public or private agency providing services to eligible children within the state.

ARSD 24:05:21:02. Approval of district's program - content of review. The office of special education shall annually approve special education programs that meet the standards of the state board of education. Each school district shall submit program approval information on or before December 1 of each school year. The school district shall be notified of approval or disapproval by letter from the office of special education. The review shall include the following:

(1) Current comprehensive plan;

(2) Certified personnel; and,

(3) Number of certified children served.

ARSD 24:05:20:09. Project evaluation and monitoring. The state education agency shall annually evaluate project approved under the IDEA, Part B, through the review and analysis of required reports submitted by local education agencies of the use of Part B funds.

In addition, the special education staff shall review the implementation of local education agency Part B projects during the state's monitoring process.

ARSD 24:05:20:20. Deficiency correction procedures. The division shall require correction of deficiencies in program operations that are identified through monitoring.

State Plan

The Division of Education, Office of Special Education reaffirms that it is the agency responsible for insuring that all agencies providing special education and related services to children with disabilities do so in a manner consistent with the requirements of state and federal statutes and regulations. The SEA responsibility extends to programs administered by other agencies as well as local school districts.

The Division of Education also insures that each educational program for children with disabilities is under the general supervision of persons responsible for these educational programs in the SEA, and that each program meets SEA standards. Evidence of meeting the above requirements include the following:

1. SDCL 13-37-1.2, as cited in this section, is implemented by the state agency through its monitoring process (both onsite and offsite) and granting of special education program approval. A program which meets compliance standards as determined by the state agency is an approved program pursuant to ARSD 24:05:13:01(2); 24:05:20:03 - 24:05:20:07; and 24:05:21:02.

   In the case where an agency's special education program is determined by the state agency to be out of compliance with applicable regulations, and the agency does not implement a plan of corrective action, that program becomes non-approved pursuant to ARSD 24:05:20:24.

   The Office of Special Education notifies the Division of Education, Office of School Standards, of that agency's non-approved status. The Office of School Standards may withhold school accreditation status if deficiencies are not corrected.

2. The staff of the Office of Special Education carry out general supervision of educational programs for children with disabilities through onsite and offsite monitoring, review and approval of comprehensive plans, analysis of data and complaint investigation/hearings. Applicable state rules are: ARSD 24:05:20:18; 24:05:20:03 and 24:05:20:04; 24:05:21:02; 24:05:20:19; 24:05:15:05, "Complaint against a subgrantee", and 24:05:30:06 through 24:05:30:12, hearing procedures.

3. State statutes and regulations which meet the requirements of this section are cited under the heading "State Standards".

4. Documentation verifying that the IDEA-B does not limit the responsibility of other state agencies other than educational agencies from providing or paying some or all of the costs of FAPE is found in SDCL 13-37-8.6 and ARSD 24:05:14:01, cited under "State Standards" in this section.

Appendices A-E provide supporting documentation that shows compliance with this requirement.

X. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Federal Requirement(s)

In accordance with 20 U.S.C. 1413 (a)(3), the South Dakota division of education shall establish and administer procedures for the development, updating, and implementation of a Comprehensive System of Personnel Development (CSPD). The components of the CSPD incorporated in the state plan must provide for: (a) the continuing education of general and special education instructional and related services personnel, including leadership personnel; (b) detailed procedures to assure that all personnel necessary to carry out the purposes of the Individuals with Disabilities Education Act (IDEA), P.L. 102-119, are appropriately and adequately prepared; (c) effective procedures for acquiring and disseminating significant information derived from educational and other research, demonstration, and similar projects; and (d) the adoption, where appropriate, of promising educational practices and materials developed through research, demonstration, and similar initiatives.

State Standards

The Administrative Rules of South Dakota (ARSD), specifically chapter 24:05:16, provide the legal authority for the state-wide leadership required to meet the Federal provisions contained in 20 U.S.C. 1413(a)(3) with respect to the state's Comprehensive System of Personnel Development. In addition to the statutory and regulatory standards which are incorporated in Section XVIII (Personnel Standards) of this State Plan, the following provisions establish a clear legal mandate for ensuring that all personnel necessary to carry out the purposes of the IDEA are appropriately and adequately prepared:

SDCL 13-1-12. Policies for school classification and accreditation - Ensuring performance of statutory powers and duties. The state board of education shall have the power and duty to establish rules and policies for execution by the executive officer of the state board as are necessary to:

(1) Establish standards for classifying, approving, and accrediting elementary, secondary, adult education, kindergarten, primary, and summer schools, both public and nonpublic; and,

(2) Ensure the performance of such powers and duties as assigned to it by statute.

SDCL 13-3-47. Classification and accreditation of schools. It shall be the duty of the superintendent of elementary and secondary education to classify, approve, or accredit elementary, secondary, adult education, kindergarten, nursery, and summer schools, both public and nonpublic, under the rules established by the state board of education.

ARSD 24:03:01:01. Definitions.

(19) "Inservice (continuing) education or training," a program of systematized activities promoted or directed by the school system or approved by the school system that contributes to the professional or occupational growth and competence of staff members during the time of their service to the school system.

ARSD 24:03:05:01.01. Inservice education and staff development plan required. A program of inservice (continuing) education and staff development shall be conducted for all certified staff annually.

A plan including 15 contact hours shall be developed and filed with the division of elementary and secondary education by September 15 of the school term the plan is to be implemented.

ARSD 24:05:21:01. School district must file comprehensive plans - contents. Each school district must have a current comprehensive plan on file with the office of special education. Districts shall update comprehensive plans every three years from filing and recertify their content annually.

Comprehensive plans shall establish compliance with this article and the Individuals with Disabilities Education Act (IDEA), Part B, and shall include the following:

> ... (11) Staff development procedures for the implementation and use of the Comprehensive System of Personnel Development established by the division of education...

State Plan

The South Dakota division of education, office of special education, is implementing a Comprehensive System of Personnel Development (CSPD) which includes:

1. Procedures and activities for the development, updating, and implementation of a state-wide Personnel Development Plan (PDP) that:

   (a) Addresses current and projected special education and related personnel needs, including the need for leadership personnel;

   (b) Coordinates and facilitates efforts among State and local educational agencies, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds and personnel with disabilities; and,

In accordance with ARSD 24:05:16:03, the division of education is responsible for developing, updating, and implementing South Dakota's Comprehensive System of Personnel Development (CSPD). In undertaking this responsibility, the division of education must administer the following regulatory requirements:

ARSD 24:05:16:03. Scope of the system. Through the division of education, the state of South Dakota shall develop, update and implement a comprehensive system of personnel development which: (a) meets all Federal requirements contained in 34 CFR 300.153 and 300.381-300.383 and 303.360-303.361, (b) coordinates and facilitates efforts among state and local educational agencies, institutions of higher education, other service providers, and professional and other associations to recruit, prepare and retain qualified personnel necessary to serve infants, toddlers, children and youth (birth through 21), including personnel from minority backgrounds and personnel with disabilities.

ARSD 24:05:16:05. Special education component in school district's comprehensive plan. The systematic development and implementation of a special education component must be described and provided for in the staff development section of each school district's comprehensive plan.

ARSD 24:05:16:06. Assignment of the comprehensive system of personnel development advisory committee. The state advisory panel for children with disabilities shall serve as the comprehensive system of personnel development advisory committee. In order to assure that all public participation requirements related to the development, implementation, and oversight of the state's comprehensive system of personnel development are met, the state advisory panel shall include, among others identified in 24:05:14:04, at least one representative each from: an institution of higher education, a local educational agency (or intermediate unit), and a parent or other advocacy organization. It shall be the responsibility of the state advisory panel for children with disabilities to: (a) advise the South Dakota department of education and cultural affairs of unmet personnel needs with respect to the provision of education and related services, including early intervention and early childhood services, to infants, toddlers, children and youth (ages birth through 21 years), (b) comment publicly on State Plans prepared for Part B and Part H of the IDEA, as well as state rules and other policy documents proposed for issuance by the state which have an impact on such personnel, and (c) assist the department of education and cultural affairs in developing and reporting such information and evaluations as may be required to assist the Secretary of the U.S. Department of Education in the performance of his or her responsibilities under the IDEA.

ARSD 24:05:16:10. Administration of continuing education. The personnel development plan for the state of South Dakota shall provide the structure for personnel planning and focus on continuing education needs. As part of the personnel planning function, the personnel development plan shall also identify preservice programming for special education and related services, including early intervention and early childhood services, available in the state and shall describe and set priorities for unmet preservice needs.

ARSD 24:05:16:11. Elements required in the personnel development plan. In describing the annual personnel needs assessment results, the personnel development plan shall detail the following:

(1) The process used for determining the state's continuing education and preservice training needs;

(2) The need for new personnel and the need for continuing education;

(3) An assurance that on-going continuing education (inservice training) programs are available to all personnel who are engaged in the provision of education and other services for infants, toddlers, children and youth with disabilities (consistent with Part B and Part

H of the IDEA). Continuing education programs will include the following:

(a) The use of incentives which ensure participation by teachers and other personnel, such as released time, payment for participation, options for academic credit, certification renewal, or updating of professional skills;

(b) The involvement of local staff; and,

(c) The use of innovative training practices which have been found to be effective;

(4) The areas in which training is needed;

(5) The groups requiring training;

(6) Training which will be administered by the state division of education and the training which will be the responsibility of other agencies. For those activities to be administered by the state division of education, the personnel development plan must describe the content and nature of training to be conducted under subdivision (4) of this section and the geographical scope, such as state-wide, regional, or local, and staff training source, such as college or university staffs, state or local education agency personnel, or non-agency personnel;

(7) The funding sources to be used;

(8) The schedule for providing identified continuing education (in-service training) activities;

(9) The procedures to be used for the effective evaluation of the extent to which program objectives are met; and,

(10) The procedures and activities that the state will undertake to enable teacher aides and other paraprofessionals who lack full qualifications (including bachelor's degrees) to acquire, from institutions of higher education, the necessary credentials for teaching special education, or for providing early intervention, early childhood special education, or related services.

ARSD 24:05:16:12. Contracts for programs materials and projects. The division of education may enter into contracts with institutions of higher education, local educational agencies, or other agencies, institutions, or organizations to carry out the following:

(1) Experimental or innovative personnel development programs;

(2) Development or modification of instructional and other specialized materials; and,

(3) Dissemination of significant information derived from educational and other research and demonstration projects.

ARSD 24:05:16:13. Dissemination of information. Each year, as a component of the state's personnel development plan, the division of education shall detail procedures for acquiring, reviewing, and disseminating significant information and promising practices derived from research, demonstration, and other projects to general and special education instructional personnel, early intervention and early childhood personnel, administrators of programs for infants, toddlers, children and youth with disabilities, and personnel from other interested agencies and organizations. As defined in the Federal regulations implementing Part B and Part H of the Individuals with Disabilities Education Act (IDEA), dissemination includes the following:

(1) Making personnel, administrators, agencies, and organizations aware of the information and practices;

(2) Giving training designed to enable the establishment of innovative programs and practices targeted on identified local needs; and,

(3) Making use of instructional materials and other media for personnel development and instructional programming.

ARSD 24:05:16:14. Annual report of efforts. Specific efforts addressing the requirements of the IDEA, Part B and Part H regulations §300.380 and 303.360, shall be set forth annually in the state's personnel development plan. The personnel development plan prepared annually by the division of education, office of special education, shall identify the state, local, regional, and national resources which will assist in meeting South Dakota's personnel needs.

ARSD 24:05:16:15. Provision of technical assistance. The division of education shall provide technical assistance to local educational agencies, educational cooperatives, and other agencies, institutions, organizations, or individuals responsible for implementing components of the state's comprehensive system of personnel development in response to the following:

(1) Requests from agencies, institutions, organizations, and individuals;

(2) The results of monitoring or application review; and,

(3) The targeting of specific training issues or concerns by the staff of the division of education.

Technical assistance may be administered through on-site visitation, teleconference, correspondence, or any other means considered appropriate and effective by division of education personnel and the receiving agency or institution, organization, or individual.

Each year, the division of education, office of special education, is responsible for preparing the State's Personnel Development Plan (PDP) which incorporates all of the information required under ARSD 24:05:16:11 (cited above). This information is disseminated to each public agency responsible for the education of infants, toddlers, children, and youth with disabilities in the state. Furthermore, the Personnel Development Plan is available to all interested parties, as announced annually in the division of education's statewide newsletters, Challenge (for school personnel) and Circuit (for parents, advocates, and others).

The data collection instruments through which the division of education determines personnel needs with respect to continuing education and preservice training, including the preparation of leadership personnel, personnel from minority backgrounds, and personnel with disabilities, are on file with the office of special education. Information from these instruments is collected and analyzed annually and serves as the basis of the State's Personnel Development Plan. These instruments and reports include: (a) the annual local district personnel evaluation (incorporated in the application for Part B flow-through funds), (b) a summary analysis of division of education compliance monitoring activities, (c) the report of students enrolled in and graduating from institutions of higher education, (d) an analysis of authority to act (emergency certification) decisions statewide, and (c) multi-year categorical personnel surveys and comparisons drawn from multiple division of education data bases.

Through the procedures and activities detailed annually through the state's Personnel Development Plan (PDP), the division of education ensures that personnel necessary to carry out the purposes of the IDEA are appropriately and adequately prepared. As cited above, the ARSD details the procedures for:

(a) The continuing education of regular education, special education, and related services personnel, including leadership personnel;

(b) Acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and,

(c) Adopting, where appropriate, promising practices, materials, and technology proven effective through research and demonstration.

(a) Continuing Education (Procedures): Consistent with the procedures contained in ARSD 24:05:16:10 and 24:05:16:11, the division of education assures that the continuing education needs of personnel essential to carry out the purposes of the IDEA are appropriately and adequately prepared. The continuing education activities, which are developed annually and based upon the needs assessment data mandated in ARSD 24:05:16:04 include, but are not limited to: (a) on-going district-level training which is detailed annually in the narrative of each district's application for IDEA-B flow-through funds, as well as in the staff development section of each district's comprehensive plan; (b) regular regional and district-specific training programs and technical assistance activities administered by the state's office of special education staff (generated as a result of compliance monitoring and state-wide needs assessment data); (c) the scheduling each year of "summer institutes" (intensive professional study for instructional and leadership personnel); and, (d) the administration of topical seminars and conferences to meet the assessed needs of regular education, special education, and related services personnel, including leadership personnel, and other important populations state-wide. A complete listing of each year's continuing education programming is contained in the State's Annual Report prepared for and approved by the South Dakota Advisory Panel for Children with Disabilities. These Annual Reports are on file with the State's division of education, office of special education.

Acquisition and Dissemination of Information and the Adoption of Promising Practices, Materials, and Technology: (Procedures): The division of education, office of special education, shall continue to collect information derived from education research and other sources which will improved the effectiveness of programs for students with disabilities. Through the division of education's Curriculum Center (located in the state capitol of Pierre) state personnel and their counterparts in local school districts will continue to share significant knowledge identified through their own profession work, as well as through national, regional and state conference participation and their review of scholarly publications. The Curriculum Center serves as a clearinghouse and central state-wide informational resource in special education for professionals, parents, and others interested in the education of students with disabilities.

In addition, the division of education disseminates information to professionals, parents, and others through publications such as: 1) Counterpoint, which is distributed to all LEAs; and 2) the Challenge, Hi-Lites and Administrative Memorandum, division of education publications sent to school personnel; and, 3) the Circuit, a state-wide newsletter for parents and others.

The purpose of the division of education's efforts to acquire and disseminate significant information available through sources across the nation is unequivocal: to assure the adoption, where appropriate, of promising practices, materials, and technology proven effective through research and demonstration. Several initiatives are being implemented state-wide by which local needs are being met through the dissemination and adoption of promising and innovative service models. These activities include the following statewide efforts: 1) "Systems Change in South Dakota", a project which enables local school districts to serve students with severe disabilities in general education settings; 2) "Transition Planning", a project designed to plan for the effective transition of secondary age youth into the state's adult services program; 3) "Partners in Progress"; a personnel preparation project to assist general and special educators in curriculum and instruction modifications and service delivery; and 4) a project focusing on distance learning cooperatively administered by the office of special education and the division of education's office of technology in education.

A description of: (a) the procedures and activities used by the state of South Dakota for the development and maintenance of a system for annual data collection on numbers and types of special education and related services personnel, including leadership personnel; and (b) the procedures for the development and maintenance of a system for determining, on an annual basis, data on qualified personnel.

The activities and procedures administered by the division of education which assure that all personnel data requirements mandated by 20 U.S.C. 1413(a)(3) are implemented are contained in the ARSD, Chapter 24. These activities and procedures are:

24:05:16:04. Annual needs assessment. Each year, the division of education shall administer a state-wide needs assessment to determine the current and projected special education and related services personnel needs, including the need for early intervention, early childhood, and leadership personnel.

24:05:16:07. Administration of the annual needs assessment. Each public agency responsible for serving infants, toddlers, children, and youth with disabilities shall submit annually to the office of special education the results of a comprehensive needs assessment. Additionally, the division of education shall survey institutions of higher education and other agencies and organizations to meet the Federal reporting requirements under 34 CFR 300.383.

24:05:16:08. Content of annual personnel needs assessment. Annually, the division of education shall collect personnel needs assessment data from all public agencies responsible for the provision of education and related services, including early intervention and early childhood services, to infants, toddlers, children, and youth with disabilities (birth through 21 years). This information shall incorporate, at a minimum, the following items:

(1) Numbers and type of new personnel needed, including early intervention, early childhood, and leadership personnel;
(2) Content areas in which in-service training is needed;
(3) Identity of groups and number of individuals requiring training;
(4) Proposals for how the necessary training shall be provided;
(5) The anticipated schedule for in-service training;
(6) The projected human and fiscal resources which will be employed to administer such training;
(7) The need for technical or other assistance which may be required of the state division of education; and,
(8) Plans for utilizing the needs assessment data in the preparation of the Part B flow-through application and the subsequent year's staff development plan due on the following September 15.

24:05:16:08.01. Annual personnel needs assessment: determination of qualified personnel. In addition to the information collected under 24:05:16:08, the division of education shall take appropriate action to collect, through surveys and other means, such information as will be required to annually determine:

(1) The number and type of personnel, including early intervention, early childhood, and leadership personnel, employed in the provision of special education and related services, including early intervention and early childhood services, by profession and discipline;

(2) the number and type of personnel who are employed with emergency, provisional, or temporary certification, licensure, or other credentials comparable to certification or licensure for that profession or discipline; and,

(3) The number and type of personnel, including early intervention, early childhood, and leadership personnel, in each profession or discipline needed, and a projection of the numbers of those personnel that will be needed in five years, based on the projections of individuals to be served, retirement, and other departures of personnel from the field, and other relevant factors.

24:05:16:08.02. Annual personnel needs assessment: specific personnel categories. In addition to information on early intervention and early childhood personnel which meet the requirements of 303.360, the data on special education and related services personnel required under this article shall include audiologists, counselors, diagnostic and evaluation personnel, home-hospital teachers, interpreters for students with hearing impairments including deafness, occupational therapists, physical education teachers, physical therapists, psychologists, rehabilitation counselors, social workers, speech-language pathologists, teacher aides, recreation and therapeutic recreation specialists, vocational education teachers, work study coordinators, and other instructional and non-instructional staff. Data on leadership personnel as required by CFR 300.383 shall include administrators and supervisors of state and local agencies who are involved in the provision or supervision of services or activities necessary to carry out the purposes of Part B and Part H of the Individuals with Disabilities Education Act (IDEA).

24:05:16:08.03. Annual personnel needs assessment: institutions of higher education. As required under CFR 300.383(c), the division of education shall annually collect data from institutions of higher education within the State of South Dakota that are preparing special education and related service personnel, including early intervention, early childhood, and leadership personnel, by area of specialization, including:

(1) The number of students enrolled in programs for the preparation of special education and related services personnel, including early intervention, early childhood, and leadership personnel, administered by these institutions of higher education; and,

(2) The numbers of students who graduated during the past year with certification or licensure, or with credentials to qualify for certification or licensure, from programs for the preparation of special education and related

services personnel, including early intervention, early childhood, and leadership personnel, administered by institutions of higher education.

24:05:16:09. Report of current and projected personnel needs. The office of special education shall: (1) review and analyze the information submitted annually by public agencies, institutions of higher education, and other sources (as required to meet the provisions of 24:05:16:06-24:05:16:10), and, (2) prepare a summary report of projected state-wide preservice and in-service needs for South Dakota. This document shall be submitted to the members of the state advisory panel on children with disabilities for review, comment, and revision and, upon the panel's approval, shall be included in the annual report of the state advisory panel. This information shall also be reported to the U.S. Department of Education as required under 34 CFR 300.383.

XI. PARTICIPATION OF PRIVATE SCHOOL CHILDREN

Federal Requirement(s)

The state plan must include policies and procedures which insure:

(1) That each LEA provide special education and related services to meet the needs of private school children in its jurisdiction (300.452(a)); (2) that to the extent consistent with their number and location in the state, provision is made for participation of private school children with disabilities in the program assisted or carried under this part by providing them with special education and related services (300.451)(a)); and, (3) the requirements of 34 CFR 76.651-662 of EDGAR are met.

State Standards

SDCL 13-37-1. Children in need of special education or special education and related services. As used in this chapter, "children in need of special education or special education and related services" means any person under the age of twenty-one years who is a resident of the state of South Dakota and who, because of his educational needs as defined by the state board of education in rules promulgated pursuant to chapter 1-26 and this chapter, is not adequately provided for through the usual facilities and services of the school and requires special education.

SDCL 13-37-14.1. District to provide appropriate program. It shall be the responsibility of the school board to provide all of its resident children in need with an appropriate educational program.

ARSD 24:05:21:01: School district must file comprehensive plans - contents. Each school district must have a current comprehensive plan on file with the office of special education. Districts shall update comprehensive plans every three years from filing and recertify their content annually.

Comprehensive plans shall establish compliance with this article and the IDEA, Part B, as amended, and shall include the following:

> ... (9) Procedures for voluntary enrollment in nonpublic schools ...

State Plan

The Division of Education, Office of Special Education reaffirms policies and procedures to insure that each LEA provides special education and related services to meet the needs of private school children within its jurisdiction to the extent consistent with their number and location in the state, in accordance with federal regulations, utilizing IDEA-B funds.

Procedures and items implementing the policies include the following:

1. Responsibilities of a state and subgrantee.

ARSD 24:05:32:01, identifies the state agency as the responsible entity:

> The division of education shall be responsible for insuring that provision is made for the participation of eligible private school children in the program assisted or carried out under this part by providing them with special education and related services.

Likewise, ARSD 24:05:32:02 and 24:05:32:18 identifies LEA responsibilities:

The requirements listed below are met by school districts.

(1) A school district shall provide students enrolled in private schools with a genuine opportunity for equitable participation in accordance with the requirements of this chapter and the IDEA, Part B.

(2) The school district shall provide that opportunity to participate in a manner that is consistent with the number of eligible private school students and their needs.

(3) The school district shall maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools.

The above requirements apply to "subgrantees" inclusive of LEAs and intermediate educational units (IEU). Further, a subgrantee will comply with the requirements of Education Department General Administrative Regulations (EDGAR) pertinent to this section (76.651-76.662).

If the state education agency carries out a project directly, it shall comply with these requirements as if it were a subgrantee.

2. Consultation with Representatives of Private School Students.

Consistent with ARSD 24:05:32:03, the state agency ensures that an applicant for a subgrant consults with private school personnel regarding the development and design of the project:

A school district shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the IDEA, Part B Application, including consideration of:

(1) Which children will receive benefits under the project;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and,

(5) How the project will be evaluated.

In compliance with EDGAR 34 CFR 76.652(b), and 76.652(c), subgrantees (LEAs, IEUs) shall:

(1) Consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project; and

(2) Shall give the appropriate representative a genuine opportunity to express their views regarding each matter subject to the consultation requirements in section 76.652.

3. Needs, Number of Students, Types of Services

The state agency ensures that the following matters are determined on a basis comparable to that used by subgrantees in providing for participation of public school students:

(a) The needs of students enrolled in private schools;

(b) The number of those students who will participate in a project; and,

(c) The benefits that the district will provide under the program to those students.

This responsibility is established in ARSD 24:05:32:04, School district to make determination on a comparable basis.

4. Benefits to Private School Students.

ARSD 24:05:32:05. Benefits to be comparable. The program benefits that a school district provides for students enrolled in private schools must be comparable in quality, scope, and opportunity for participation to the program benefits that the district provides for students enrolled in public schools.

ARSD 24:05:32:06. Funding programs to be comparable. If a school district uses funds under a program for public school students in a particular attendance areas, or grade or age level, the district shall insure equitable opportunities for participation by students enrolled in private schools who have the same needs as the public school students to be served and are in that group, attendance area, or age or grade level.

ARSD 24:05:32:07. Different needs shall be supplied different programs. If the needs of students enrolled in private schools are different from the needs of students enrolled in public schools, a district shall provide program benefits for the private school students that are different from the benefits the district provides the public school students.

5. Level of Expenditure

The state agency insures through the following administrative rules that a subgrantee shall spend the same average amount of program funds on private school students:

ARSD 24:05:32:08. Program funds to be spent equally. A school district shall spend the same average amount of program funds on a student enrolled in a private school who receives benefits under the program and a student enrolled in a public school who receives benefits under the program.

ARSD 24:05:32:09. Costs, if averaged, may differ. The school district shall spend a different average amount on program benefits for students enrolled in private schools if the average cost of meeting the needs of those students is different from the average cost of meeting the needs of students enrolled in public schools.

Level of expenditure is subject to information included in an LEA application as provided for the section below.

6. Information in an Application for a Subgrant.

The state agency insures that an applicant for a subgrant includes all information required by 34 CFR 76.656 (EDGAR) in its application for funds through the following:

ARSD 24:05:32:10. Information to be included in application. A school district shall include the following information in its application for IDEA, Part B funds:

(1) A description of how the district will meet the federal requirements for participation of students enrolled in private schools;

(2) The number of students enrolled in private schools who have been identified as eligible for benefits under the program;

(3) The number of students enrolled in private schools who will receive benefits under the program;

(4) The basis the district used to select students;

(5) The manner and extent to which the district complied with the consultation requirements; (34 CFR 76.652)

(6) The places and times that the students will receive benefits under the program; and,

(7) The differences, if any, between the program benefits the district will provide to public and private school students, and the reasons for the differences.

7. Separate Classes Prohibited

The state agency ensures this provision through the following:

ARSD 24:05:32:11. Proscribed use of funds. A school district may not use program funds for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site and the classes include students enrolled in public schools and students enrolled in private schools.

8. Funds Not to Benefit a Private School

Pursuant to ARSD 24:05:32:12, the state agency ensures that:

A school district may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

The state further ensures that applicants for funds will use such funds to meet the specific needs of students enrolled in private schools, rather than:

(1) The needs of the private schools; or,

(2) The general needs of the students enrolled in a private school.

9. Personnel

State administrative rules ensure that applicants for funds utilize personnel in a manner consistent with federal regulations:

ARSD 24:05:32:13. Personnel use authorized. A school district may use program funds to make public personnel available in other than public facilities to the extent necessary to provide equitable program benefits designed for students enrolled in a private school and if those benefits are not normally provided by the private school.

ARSD 24:05:32:14. Use of private school employees authorized. A school district may use program funds to pay for the services of an employee of a private school if the employee performs the services outside of his or her regular hours of duty and the employee performs the services under public supervision and control.

10. Equipment and Supplies

The state agency ensures proper use of equipment and supplies as stated in the following rules:

ARSD 24:05:32:15. School district to maintain control of equipment and supplies. A school district must keep title to and exercise continuing administrative control of all equipment and supplies that the school district acquires with program funds.

The school district may place equipment and supplies in a private school for the period of time needed for the project.

The school district shall insure that the equipment or supplies placed in a private school are used only for purposes of the project and can be removed from the private school without remodeling the private school facilities.

ARSD 24:05:32:16. Equipment and supplies to be removed from private schools upon cessation of need. The school district shall remove equipment or supplies from a private school if the equipment or supplies are no longer needed for the purpose of the project or removal is necessary to avoid use of the equipment or supplies for other than project purposes.

11. Construction

The state agency ensures that funds will not be used for construction relative to private schools through ARSD 24:05:32:17:

A school district shall insure that program funds are not used for the construction of private school facilities.

12. Implementation of the above requirements by local education agencies and other recipients of IDEA-B funds, and monitoring of compliance with these regulations by the state agency occurs through a variety of methods. Each local education agency must submit, for review and approval, a comprehensive plan to the state agency (see Appendix D).

The comprehensive plan is the agency's application for IDEA-B funds. The comprehensive plan must include a description of how the district will identify and provide special education services to children voluntarily enrolled in nonpublic schools.

State agency monitoring is carried out through presite and onsite activities. Presite activities include review of comprehensive plans, review of action required as a result of hearings or complaints, and review of other pertinent documentation.

Onsite monitoring consists of review of students files and interviews, (see Appendix E).

XII. PLACEMENT IN PRIVATE SCHOOLS

Federal Requirement(s)

The state plan must include policies and procedures regarding the requirement that, if children with disabilities are placed in or referred to private schools or facilities by the state agency or local education agency as a means of providing special education and related services, the state insures that such services are provided in conformance with an IEP, at no cost to the parents, in a school or facility which meets state education standards, and the child has all of the rights of a child with a disability who is served by a public agency, 34 CFR 300.401-403.

State Standards

SDCL 13-37-14.1. District to provide appropriate program. The school board shall provide all of its resident children in need with an appropriate educational program.

SDCL 13-37-7. Assignment of children for special education -- School district responsible for costs. The secretary of the department of education and cultural affairs shall have the authority to assign children to a vendor for purposes of special education as provided in this chapter. Such assignments must indicate the beginning date for, and the nature of, the specific service to be provided. When a child has been so assigned, the school district wherein such child has school residence shall be responsible for the costs of such special education to the extent hereinafter provided.

SDCL 13-37-8.4. Cost paid by school district. The cost of special education shall be the responsibility of the school district wherein the child in need of special education or special education and related services has school residence through its source of revenue provided in §13-37-16.

ARSD 24:05:13:01. Definitions.

(10) "Free appropriate public education," means special education and related services which:

- (a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the state board of education and Part B of the IDEA as amended;

(c) Include preschool, kindergarten, elementary school, and secondary school education in South Dakota; and,

(d) Are provided in conformity with an individualized educational program and these rules.

ARSD 24:05:21:01. School district to file comprehensive plans -- Contents. Each school district must have a current comprehensive plan on file with the office of special education. Districts shall update comprehensive plans every three years from filing and recertify their content annually.

Comprehensive plans shall establish compliance with this article and the IDEA, Part B as amended, and must include the following:

... (8) Procedures for private school placement ...

State Plan

The Division of Education, Office of Special Education reaffirms the policy that, if children with disabilities are placed in or referred to private schools by the state agency or LEA in order to provide them special education and related services, such programs will be provided: 1) in conformance with an IEP, 2) at no cost to the parents of the child, and 3) in a school which meets state education standards. Children placed in private schools shall have all of the rights of children with disabilities who are served by a public agency. State administrative rules supporting this policy are:

> ARSD 24:05:31:01. Applicability. The provisions of this chapter (Placement in Private Schools) only apply to eligible children who are or have been placed in or referred to a private school or facility by a school district as a means of providing special education or special education and related services.
>
> ARSD 24:05:31:02. Responsibility of division of education. The division of education shall be responsible for insuring that an eligible child who is placed in or referred to a private school or facility by a school district is provided special education or special education and related services in conformance with an individual educational program which meets

the requirements of these rules at no cost to the parents, and at a school or facility which meets the standards that apply to state and local school districts, including the requirements in this chapter.

ARSD 24:05:31:03. Implementation by division of education. The division of education shall:

(1) Monitor compliance with this chapter through procedures such as written reports, on-site visits and parent questionnaires;

(2) Disseminate copies of these rules to each private school and facility to which a public agency has referred or placed an eligible child; and,

(3) Provide an opportunity for those private schools and facilities to participate in the development and revisions of state standards which apply to them.

ARSD 24:05:31:04. Placement of children by parents. If an eligible child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under these rules (see 24:05:32).

Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility are subject to the due process procedures.

Due process procedures are stated in ARSD, Chapter 24:05:30.

Monitoring procedures used by the state agency pertinent to this part are described in Appendix E.

XIII. RECOVERY OF FUNDS FOR MISCLASSIFIED CHILDREN

Federal Requirement(s)

The state plan must include policies and procedures which insure that the state seeks to recover any funds made available under Part B of IDEA for services to any child determined to be erroneously classified as eligible to be counted (34 CFR 300.141), which includes verification of child count.

State Standards/State Plan

The Division of Education, Office of Special Education reaffirms the policy that the state will seek to recover any funds provided under IDEA-B for services to a child who is erroneously classified as eligible to be counted. State administrative rules and other procedures that implement this policy are:

ARSD 24:05:13:01. Definitions.

(6) "Children in need of prolonged assistance," are those children under the age of three who because of the intensity of their physical, mental, or emotional problems or a combination of such problems, need educational, social, psychological, or medical services beyond those which are traditionally offered in order to achieve their expected potential for useful and meaningful participation in society and for self-fulfillment.

(9) "Eligible student," means a person under the age of twenty-one years who is a resident of the state of South Dakota who requires special education or special education and related services because of his educational needs.

ARSD 24:05:22:03. Certified child. A certified child is a child in need of special education or special education and related services who has received a multidisciplinary evaluation and has an individual education program formulated and approved by a local placement committee. Documentation supporting a child's disabling condition as defined by Part B of the IDEA must be maintained by the school district for verification of its annual federal child count. This definition applies to all eligible children ages 3 through 21 and children under the age of 3 only in need of prolonged assistance.

ARSD 24:05:17:02. Federal child count procedures under Part B of the IDEA. The division of education, office of special education shall:

(1) Direct local educational agencies and other educational institutions to count the number of children with disabilities receiving special education and related services prior to the federal reporting date of February 1;

(2) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(3) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under this section; and,

(4) Insure that documentation is maintained which enables the state and the U.S. secretary of education to audit the accuracy of the count.

ARSD 24:05:17:03. Annual report of children served. In its annual report of children served, the division shall indicate:

(1) The number of children with disabilities receiving special education and related services on December 1 of that school year;

(2) The number of those children within each disability category, as defined in the definitions of "children with disabilities" under the IDEA, Part B; and,

(3) The number of those children with disabilities within the age groups established by the United States department of education.

A child must be counted as being in the age group corresponding to his or her age on the date of the count.

The division of education may not report a child under more than one disability category.

ARSD 24:05:17:04. Child with disabilities report. The division shall report that child in accordance with the following procedure if a child with disabilities has more than one disability:

(1) A child who is both deaf and blind must be reported as "deaf-blindness."

(2) A child who has more than one disability (other than deaf-blindness) must be reported under the category of "multiple disabilities."

The division of education shall include in its report a certification signed by the State Secretary of Education that the information provided is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

ARSD 24:05:17:05. Children included in report. The division of education may include children with disabilities in its report who are involved in a school or program which is operated or supported by a public agency, and which either:

(1) Provides them with both special education and related services; or,

(2) Provides them only with special education if they do not need related services to assist them in benefitting from that special education.

ARSD 24:05:17:06. Children not included in report. The division of education may not include children with disabilities in its report who:

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets state standards;

(3) Are not provided with a related service that they need to assist in benefiting from special education;

(4) Are counted by the state agency under subpart 2 of Part D of Chapter I of Title I, as amended; or,

(5) Are receiving special education funded solely by the federal government.

ARSD 24:05:17:07. Children to be counted for special education. A state may not count Indian children on or near reservations and children on military facilities if it provides them no special education. If a state or local educational agency is responsible for serving children, and does provide them special education and related services, they may be counted.

ARSD 24:05:17:08. Written notice provided by state director. On or before October 1 of each school year, the state director of special education shall provide all local education agencies with written notice of the procedures to be followed in counting eligible children for the purpose of generating federal funds under the IDEA, Part B.

At a minimum, the above notice shall include:

(1) The federal definitions of children with disabilities under the IDEA, Part B; and,

(2) The criteria for counting children with disabilities as set out in these rules.

ARSD 24:05:17:09. Return of information. This information shall be returned to the office of special education, on standard forms provided by the state, no later than November 1 of each school year. Each local school superintendent shall certify in writing that the information provides is accurate and unduplicated count of children with disabilities receiving special education or special education and related services on December 1 of each school year. If December 1 falls on Saturday or Sunday, the count shall be taken on the first working day following the weekend.

On December 1, of each school year, the state director of special education shall provide local educational agencies with written notice of the opportunity to update their federal child count and to verify the original information submitted. This updated information and verification shall be returned to the office of special education on or before December 15 of each school year. No change in local education agencies federal child count shall be made after January 5 of any school year.

As stated in the preceding rules, LEAs submit a count of children with disabilities to the SEA, which has the responsibility for monitoring the child count. As part of the monitoring process, SEA staff verify a district's most recent child count as part of on-site compliance monitoring (see Appendix E).

Verification is typically an IEP with parent signature indicating approval of the program within the timeframe of that reporting period. SEA staff also review in-depth ten percent (10%) of student files of student names appearing on the LEA child count from the previous year. Student files must contain all required documentation, including information that substantiates a student's need for special education or special education and related services, and disabling condition. At the discretion of the SEA, it may review for verification purposes all student files as reported on a district's child count.

In the event of a discrepancy between the number of students claimed by the LEA for receipt of IDEA-B funds and SEA monitoring findings, the following administrative rules apply:

ARSD 24:05:18:01. State notification procedures. The division of education shall notify all public agencies regarding their responsibility to identify, report, and aid in the recovery of funds appropriated for services provided to misclassified children.

ARSD 24:05:18:02. Notice. Notice shall be provided by the State as follows:

(1) Instructions distributed for the December 1 child count shall include a section indicating the school district's responsibility to identify misclassified children, and describing the procedures for reporting such erroneously classified children;

(2) Instructions contained in the local education agency application for IDEA, Part B flow-through support shall contain a statement indicating the district's and other school district's responsibility to identify, report, and aid in the recovery of funds for a misclassified student; and,

(3) The dissemination of a policy memorandum once every three years occasioned to coincide with the preparation and submission of the state plan under the IDEA, Part B.

This memorandum, directed to the district superintendent and special education and fiscal staff, shall encourage public agency officials to review and be knowledgeable about the state and federal requirements and the state procedures identified here pertinent to the recovery of funds for misclassified students.

ARSD 24:05:18:03. Procedures for the identification of erroneously classified children. Each public agency is required to maintain specific documentation as to the identification, evaluation, program, and placement of each child with disabilities. Identification of misclassified students shall be determined through the following means:

(1) The annual process conducted by public agencies for updating individualized education plans and the reevaluation of students with disabilities which must be administered at least once every three years.

(2) The implementation by division of education staff of program administrative reviews in conformance with the monitoring standards contained in the state rules governing the provision of special education. This review includes an analysis of decisions rendered as the result of impartial due process hearings.

(3) Investigations conducted under the state's complaint management system.

(4) The annual review of district comprehensive plans conducted by division of education staff.

ARSD 24:05:18:04. Reevaluation. The secretary of education may require a local education agency to reevaluate any child whose eligibility for service under Part B is questioned as a result of local or state monitoring or document review or the investigation of a complaint; and submit requested evaluation data to the division of education, office of special education, for review and analyses as to child's eligibility for service under Part B of the IDEA.

ARSD 24:05:18:05. Procedures for the reporting and recovery of funds assigned to erroneously classified children. The division of education conducts program administrative reviews and fiscal audits on a regularly scheduled basis consistent with these rules. If, as a result of these programs or financial reviews, it is determined that IDEA Part B funds have been made available to an eligible agency as the result of a misclassified child, recovery shall be implemented.

ARSD 24:05:18:06. Notice of audit exception. A formal notice signed by the Secretary of Education shall be transmitted to the public agency identified as reporting erroneously classified students. This notice of audit exception shall include a statement of:

(1) The numbers of students erroneously classified;

(2) The means by which the misclassification of students was discovered;

(3) How, in each instance, the occurrence of misclassification was determined; and,

(4) The amount, timeframe and method of returning funds for erroneously classified students to the State.

ARSD 24:05:18:07. Penalty for failure to reimburse. In the event that the public agency does not reimburse the state within ninety days of notification of exception, the division of education may withhold future IDEA, Part B funds to which the public agency is entitled, or will take other appropriate action to recover the funds. State statutory authority authorizing the recovery of funds in cases of public agency refusal to repay misapplied funds is SDCL 4-11, post-audit accounts.

ARSD 24:05:18:08. Right to appeal. In the event that a district disagrees with the findings of misclassification determined by the division of education a hearing may be requested by the following the procedures detailed in SDCL 1-26.

XIV. NOTICE AND OPPORTUNITY FOR HEARING ON LEA APPLICATION

Federal Requirement(s)

The state plan must include procedures to insure that the state education agency does not take final action regarding any application submitted by a local education agency before giving the local agency reasonable notice and opportunity for a hearing. (300.144)

State Standards/State Plan

The Division of Education, Office of Special Education reaffirms the policy that it will not take any action regarding an application submitted by a local education agency before giving the local agency reasonable notice and opportunity for a hearing. In order to receive IDEA - Part B funds, LEAs must submit an application. Pursuant to ARSD 24:05:21:03, local district special education comprehensive plans, plus other information, comprise the LEA application for funds. Specific procedures relative to LEA applications are outlined in ARSD, Chapter 24:05:20, "Applications for Federal Funds."

If the application is determined to be deficient, the following procedures will be carried out by the state agency:

1. The applicant will be informally notified of any deficiency in the application and given the opportunity to take such actions as may be needed to correct the application.

2. In the event that the applicant is unwilling or unable to change its application, or the applicant disagrees with the decision of the state agency, the agency will initiate a written formal notice of intent to disapprove the application. Such notice will be sent to the applicant's chief executive officer and shall state the actions the applicant must take to correct it's application.

State administrative rules which support this item are:

ARSD 24:05:20:19. Collection and analysis of data. The division shall collect and analyze information sufficient to identify any deficiency of a public or private agency providing services to eligible children within the state.

ARSD 24:05:20:20. Deficiency correction procedures. The division shall require correction of deficiencies in program operations that are identified through monitoring (Monitoring includes review of LEA applications).

ARSD 24:05:20:22. Division correction methodology. A proper method for satisfying this standard shall involve ordering agencies to take appropriate corrective actions, including the submission of a plan for achieving and documenting full compliance.

ARSD 24:05:20:24. Compliance. If an agency either fails to voluntarily take steps to correct any identified deficiency, or fails to take any of the corrective actions specified by the division and/or incorporated in a corrective action plan submitted by the agency and approved by the division, the division must notify that agency of the following:

(1) The failure to voluntarily correct an identified deficiency constitutes a failure on their part to administer their special education program in compliance with federal law;

(2) The actions the division intends to take in order to enforce compliance with state and federal law;

(3) The right to a hearing prior to the division's exercise of its enforcement responsibility; and,

(4) The consequence the division's enforcement action would have on continued and future state and federal funding of that agency's special education programs.

3. The applicant's chief executive officer may file a hearing request pursuant to ARSD 24:05:15:01 as follows:

   (a) The applicant shall request the hearing within 30 days of the action of the State education agency (SEA).

(b) Within 30 days after it receives a request, the SEA shall hold a hearing on the record and shall review its action.

(c) No later than 10 days after the hearing the agency shall issue its written ruling, including findings of fact and reasons for the ruling.

(d) If the agency determines that its action was contrary to State or Federal statutes or regulations that govern the applicable program, the agency shall rescind its action.

(e) If the SEA does not rescind its final action after a review, the applicant may appeal to the U.S. Secretary. The applicant shall file a notice of the appeal with the U.S. Secretary within 20 days after the applicant has been notified by the SEA of the results of the agency's review. If supported by substantial evidence, findings of fact of the SEA are final.

4. The state shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.

XV. ANNUAL EVALUATION

Federal Requirement(s)

The state plan must describe procedures the state agency will use for evaluating, at least annually, the effectiveness of programs in meeting the educational needs of children with disabilities, including the evaluation of IEPs,34 CFR 300.146.

State Standards/State Plan

The Division of Education, Office of Special Education reaffirms its commitment to evaluate, at least annually, the effectiveness of programs in meeting the educational needs of children with disabilities, including evaluation of IEPs. The procedures for accomplishing this requirement include:

1. ARSD 24:05:20:25 names the state agency as the responsible entity for completing this activity, and identifies how evaluation will be completed:

> The division of education, office of special education, shall annually evaluate the effectiveness of programs in meeting the educational needs of special education children, including the evaluation of individual education programs. This activity shall be accomplished through the state's monitoring system and comprehensive plan approval process.

State agency monitoring consists of onsite review of LEAs and other agencies serving children in need of special education or special education and related services, and offsite review of comprehensive plans and other documentation.

The process and instruments used by the state agency for onsite compliance reviews are found in Appendix E.

State agency staff review sample student files, based on the ranges described in the state's monitoring system. When choosing the sample, staff considers a variety of variables including student age, disabling condition, placement, etc. Staff also verifies all district IEPs with the most recent child count report for that district.

These sources of information, student file/IEP in-depth review, IEP verification against child count data, and a review of district child count data provide the mechanism by which the state agency annually evaluates the effectiveness of IEPs.

2. State agency review of local district comprehensive plans, due process hearing request outcomes, complaints, and other relevant documentation such as monitoring reports and district corrective action plans comprise the process of offsite monitoring is a second means by which the state agency evaluate the effectiveness of special education programs within the state.

ARSD 24:05:21:01 describes the required content for local district comprehensive plans:

> Each school district must have a current comprehensive plan on file with the office of special education. Districts shall update comprehensive plans every three years from filing and recertify their content annually.
>
> Comprehensive plans shall establish compliance with this article and the IDEA, Part B as amended, and shall include the following:
>
> (1) Full program services goals and procedures, including a timetable for accomplishing the goals and a description of the kind and number of facilities, personnel, and services necessary to meet the goals;
>
> (2) Ongoing child identification procedures;
>
> (3) Referral, evaluation and placement procedures;
>
> (4) Procedures for the development and annual review of the individual educational program for each child;
>
> (5) Procedures for least restrictive environment;
>
> (6) Policies and procedures on confidentiality of information;
>
> (7) Procedural safeguards, to include:
>
> (a) Opportunity to examine records;

    (b) Independent educational evaluation;

    (c) Prior notice and parent consent;

    (d) Impartial due process hearing;

    (e) Surrogate parent procedure;

    (f) Protection in evaluation procedures; and

    (g) Procedures for evaluating specific learning disabilities.

(8) Procedures for private school placement;

(9) Procedures for voluntary enrollment in nonpublic schools;

(10) Procedures for parent involvement in meeting the full program services goals of the district;

(11) Staff development procedures for the implementation and use the comprehensive system of personnel development established by the division of education;

(12) Procedures for the employment of special education personnel who have the special education endorsement as required in section 24:02:03:21 or 24:02:03:21:01; and,

(13) Policy on the provision of facilities, materials, and equipment used for special education being comparable to those used in regular education.

Pursuant to ARSD 24:05:21:02, the SEA annually approves special education programs that meet the standards of the state board of education.

3. Another method the state agency uses to evaluate the effectiveness of programs is through project evaluation and monitoring pursuant to ARSD 24:05:20:09:

The state education agency shall annually evaluate projects approved under IDEA, Part B, through the review and analysis of required reports submitted by local education agencies on the use of Part B funds. In addition, the special education section staff shall review the implementation of local education agency Part B projects during the state's monitoring process.

In addition to the policies and procedures noted above, the state is currently addressing this requirement through South Dakota's comprehensive school restructuring/modernization effort and student outcome information system. Each of these initiatives is dealt with separately below.

4. School Restructuring/Modernization.

Given the national goals for school improvement, the state has initiated a school restructuring/modernization program in pilot school districts across the state. Children with disabilities have been included in this effort. In multiple pilot sites, the mastery learning process is being used with adaptations. IEPs for children with disabilities have been integrated into this model which serves as one more means of determining program effectiveness.

5. Student Information System.

One common element of the state's school restructuring effort, noted above, is reaching student achievement. Given the need to document student performance, the office of special education has begun to develop a student information system. This system is being developed in conjunction with modernization pilot sites. It is anticipated that the system will be fully operational by the end of this state plan cycle.

XVI. POLICIES AND PROCEDURES FOR USE OF PART B FUNDS

Federal Requirement(s)

Policies and procedures designed to ensure that funds paid to the State under Part B of the Act are spent in accordance with the provision of Part B, with particular attention given to sections 611(b), 611(c), 611(d), 612(2), and 612(3) of the Act (300.148).

State Standards/State Plan

The Division of Education, Office of Special Education reaffirms the policy that IDEA, Part B funds will be expended in accordance with the provision of federal laws and regulations governing use of such funds. Procedures implementing this policy include:

1. As stated in ARSD 24:05:21:03, local district comprehensive plans together with statements of expenditures, descriptions of annual use of Part B funds and certification of federal assurances constitute a local education agency application for Part B funds.

2. Pursuant to ARSD 24:05:20:01 and 24:05:20:02, the state agency annually notifies local education agencies of the availability of funds and provides such agencies with additional information pertinent to the application.

3. The state agency reviews and approves applications in accordance with procedures described in ARSD 24:05:20:03, 24:05:20:04, 24:05:20:05, 24:05:20:06, and 24:05:20:07.

4. A minimum of seventy-five percent (75%) of the IDEA-B funds awarded to South Dakota in any fiscal year shall be distributed as flowthrough entitlement funds to local school districts who submit an application which adequately fulfills the requirements of IDEA-B and applicable regulations.

5. In accordance with ARSD 24:05:19:01, each local education agency shall be entitled to the amount of flowthrough funds which bears the same ratio to the total amount of such funds as the number of children with disabilities reported as being served by the local education agency bears to the count which establishes the total state grant of IDEA-B funds.

6. Consistent with federal regulations, ARSD 24:05:19:03, 24:05:19:04, 24:05:19:05, 24:05:19:06, and 24:02:19:07 describe the required uses and proscriptions of use of IDEA-B funds.

7. Local education agencies which have an entitlement of less than $7,500 in any fiscal year shall be required to submit a consolidated application with another local education agency(ies) in order to be eligible to receive funds. The combined IDEA-B entitlements of local education agencies participating in a consolidated application shall exceed the $7,500 minimum established in the IDEA-B. State rules governing consolidated applications are ARSD 24:05:20:10, 24:05:20:12, and 24:05:20:13.

8. ARSD 24:05:20:13 specify the conditions under which the state agency may not distribute funds to a local education agency.

9. The state may use five percent of the total state allotment in any fiscal year under Part B of the Individuals with Disabilities Education Act, or $450,000 whichever is greater, for administrative costs related to carrying out sections 1412 and 1413. However, this amount cannot be greater than twenty-five percent of the state's total allotment for the fiscal year under Part B of the Act.

   The state educational agency may use these funds for:

   (1) Administration of the annual program plan and for planning at the state level, including planning, or assisting in the planning, of programs or projects for the education of children with disabilities;

   (2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilities;

   (3) Technical assistance to local educational agencies with respect to the requirements of this article;

(4) Leadership services for the program supervision and management of special education activities for children with disabilities; and

(5) Other state leadership activities and consultative services.

10. The state may use the portion of its allocation that it does not use for administration for:

(1) Direct and support services in accordance with the priority requirements under Part B of the Individuals with Disabilities Education Act; and,

(2) The administrative costs of the state's monitoring and complaint investigations, to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during fiscal year 1985.

Direct services means services provided to a child with disabilities by the state directly, by contract, or through other arrangements.

Support services includes implementing the comprehensive system of personnel development, recruitment and training of hearing officers and surrogate parents and public information and parent training activities relating to a free appropriate public education for children with disabilities.

11. In accordance with ARSD 24:05:20:15, 24:05:20:16, and 24:05:20:17, local education agencies will keep records which show how IDEA-B funds were used.

XVII. DESCRIPTION OF USE OF PART B FUNDS

Federal Requirement(s)

The state plan must include information describing how the state will use Part B funds in fiscal years 1996, 1997, and 1998.

State Plan

A. State Administrative Positions

The following chart lists each administrative position paid in whole or in part with Part B funds, a description of the duties of each person, and percentage of salary paid with Part B funds. These components are applicable to FY 1996, 1997 and 1998.

Position	**Description of Duties**	**Percentage of Salary Paid with Part B**
Education Program Manager	State director of education programs and services for children or special education and related services. Oversees office of special education staff activities to monitor agency's compliance with federal and state statutes and regulations governing special education in South Dakota. Administers state and federal resources to assure appropriate educational opportunities to South Dakota children in need of special education and related services. Provides leadership in development of statewide policies and procedures and in state administrative rule development. Facilitates collaboration among all individuals involved in the education of children in need of special education and related services. Provides	50%

Position	Description of Duties	Percentage of Salary Paid with Part B
	staff development and technical assistance. Directly supervises office of special education staff. Provides leadership/implementation of special education role and function in school restructuring efforts.	
Education Program Representative II	Assistant director, office of special education. Assists in development of statewide policies and procedures. Provides technical assistance to LEA personnel, parents, and others regarding special education issues. Manages states' Part B grant, including coordination of LEA application review process and discretionary project. Coordinates due process hearing requests/mediations and complaint investigations. Assists in the development of statewide special education policies and procedures. Develops special education state plan. Coordinates and participates in compliance monitoring. Acts as regional liaison back-up and responds to district/agency needs. Participates in workgroup activities designed to implement OSE priorities.	100%
Education Program Representative I	Primary responsibilities in the areas of transition. Provides leadership in the development and implementation of transition services for	100%

Position	Description of Duties	Percentage of Salary Paid with Part B
	secondary age students with disabilities. Works with state and local agencies to insure that students with disabilities receive necessary services to enable them to live, work, and recreate in the environment of their choice. Conducts compliance reviews, and coordinates program compliance reviews for state facilities/ agencies. Provides staff development and technical assistance. Serves as regional liaison to assigned districts and agencies. Engages in implementing workgroup priorities established by OSE.	
Education Program Representative I	Coordinator, statewide comprehensive system of staff development. Provides leadership in the development of the state's annual CSPD plan, including coordination of several statewide conferences. Administers Chapter I - Handicapped (P.L. 89-313) state grant. Provides staff development and technical assistance; conducts compliance reviews. Coordinates child count and annual data collection. Serves as regional liaison and engages in implementing workgroup activities established by OSE priorities.	100%

Position	Description of Duties	Percentage of Salary Paid with Part B
Education Program Representative I	Primary responsibility is the coordination of the Auxiliary Placements and Tuition Program in accordance with SDCL 13-28-11.11. Responsible for program policies and procedures, determination of student eligibility, student educational placement, monitoring the educational placement of students under the jurisdiction of this program, liaison with other state and federal agencies and private agencies, negotiation of tuition rates, and payment to providers for educational services. Conducts program compliance reviews; assists in mediation of hearing requests. Serves as regional liaison and responds to district/agency needs. Participates in workgroup activities to implement OSE priorities.	25%
Education Program Representative	Primary responsibility is in the area of program compliance monitoring. Develops and implements the four year review schedule. Coordinates the annual review team schedule, prepares all presite material and oversees onsite and postsite activities. Provides technical assistance to districts and agencies for assigned region. Engages in workgroup activities and assignments pertaining to OSE priorities.	100%

Position	Description of Duties	Percentage of Salary Paid with Part B
Education Program Assistant Manager	Coordinates the Birth to Three Connection Program. Assists in monitoring of Part B programs, reviews corrective action plans and material for compliance. Acts as regional liaison backup in response to district/agency needs. Participates in workgroup activities designed to respond to OSE priorities. Collaborate with Part B program to implement transition activities.	10%
Educational Program Representative	Coordinates the 619 program and associated activities. Assists in the monitoring of Part B programs, reviews corrective action plans and material for compliance. Serves as regional liaison to assigned districts/agencies. Participates in workgroup activities designed to implement OSE priorities.	50%

B. State Education Agency Administrative and Support Activities

The following major administrative and support activities will be carried out in fiscal years 1996, 1997, and 1998:

1. Provision of technical assistance to LEAs regarding appropriate implementation of procedures to maintain compliance with IDEA-B and state rule requirements. This includes "technical assistance update papers", technical assistance manuals, guidelines, administrator academies, and onsite technical assistance.

2. Hearing Officer training to ensure that special education due process hearings are completed in a timely and

appropriate manner. Additionally, mediation training update may be provided to SEA staff and others.

3. Continued support of the Technology in Education (TIE) statewide office. This office provides technical assistance to LEAs and other consumers in the area of technology applications to special education, including availability and use of assistive devices.

4. The state agency will support the activities and development of the Local Interagency Team (LIT) established to improve the delivery of services for children with serious emotional disorders. The LITs functions to assist in the identification of appropriate services, programs and placements for minors with emotional disturbances.

5. Continued support of South Dakota's Curriculum Center for the purpose of disseminating promising practice information, curriculum, and instructional methodologies; formatting the OSE newsletter "Hi-Lites in South Dakota Special Education"; and, dissemination of OSE technical assistance guides and information.

6. The Office of Special Education continues its efforts to unify special education student data collection. The data collection system is used to meet state and federal reporting requirements, but is also used for planning. A product of the data collection process is an annual data report that is disseminated statewide for use in planning services for children with disabilities.

7. The Office of Special Education will continue onsite program compliance monitoring. Local districts and other agencies are monitored onsite every four years. This schedule allows for approximately 50 onsite compliance reviews per year.

8. Staff will continue to conduct complaint investigations in response to written complaints pursuant to ARSD 24:05:15. Administrative costs of state monitoring and complaint investigations are allowable to the extent that these costs exceed such administrative costs incurred during FY 85.

9. The state agency will continue to provide statewide staff development activities. The following conference/workshops are offered:

   a. Special education director's conference;

   b. "Great Plains Special Education Law and Practice" Institute;

   c. "Summer Institute", a week-long indepth; study of a particular topic, i.e. LRE, and,

   d. "Assessment and Program Development for Autistic Students".

10. The state agency will support efforts to continue a statewide parent organization and collaboration among parent groups to ensure that parents have access to pertinent information and receive assistance.

11. The South Dakota Special Education Advisory Panel for Students with Disabilities will annually establish funding priorities based upon statewide needs and assessment data. Requests for Proposals (RFPs) will be released annually to LEAs and other eligible agencies.

12. The state agency will continue to fund special projects based on need as identified by staff as a result of monitoring, complaint investigations, and technical assistance.

13. The state agency will initiate activities to develop a training and employment model for young people with disabilities in local communities. The model will assist local education agencies and local service delivery agencies in working cooperatively to assure employment opportunities for young people with disabilities as they make the transition from education support to adulthood.

14. The state agency will continue activities to implement a Student Information System which supports school systems modernizing efforts, including special education.

15. The Office of Special Education will support inclusive Elementary and Special Education programs. Quality

inclusive schooling entails the delivery of special education services in regular classrooms and neighborhood schools. Through a redesigned teacher education program, elementary education majors of the future will no longer have the option of choosing special education as a second major, it will be included in their teacher preparation program.

16. The Office of Special Education will work in cooperation with South Dakota School for the Deaf, and South Dakota School for the Visually Impaired to support needs identified for students requiring braille instruction or sign language through goals established in the interagency agreement.

17. The Office of Special Education will provide continued support of a Collaborative Effective Education Design (CEED) project. CEED will provide a unified and active coalition that will support local communities and facilitate the effective transitions of all individuals from birth into adult life through integrated staff development and service delivery.

As previously stated in this plan, the state agency does not provide direct services for children with disabilities.

C. State Advisory Panel

South Dakota's Advisory Panel for Special Education has been engaged and will continue to be engaged in the following activities in fiscal years 1996, 1997, and 1998, as stated in ARSD 24:05:14:03:

(1) Advise the division of education of unmet needs pertinent to the education of infants, children, and youth with disabilities within the state;

(2) Comment publicly on the state plan for the IDEA, Part B and state rules or policies regarding the education of infants, children and youth with disabilities proposed for issuance by the state regarding the education of children with disabilities and procedures for distribution of funds;

(3) Assist the state in developing and reporting such information and evaluations as may assist the state or

the secretary of the U.S. Department of Education in the performance of any of the requirements of the IDEA;

(4) Review the findings and decisions of due process hearings conducted in the state; and

(5) The chairperson of the state advisory panel for special education with the majority consent of the state advisory panel shall appoint members of the panel to serve as the comprehensive system of personnel development advisory committee.

Procedures under which the state advisory panel function are described in ARSD 24:05:14 (see Appendix B).

D. Local Educational Agency Allocations

	FY 1996	FY 1997	FY 1998
A. Number of LEAs receiving Part B Allocation (excluding consolidated applications)	45	41	41
B. Percentage of LEAs receiving Part B funds (excluding consolidated applications).	25	24	24
C. Number of LEAs receiving Part B allocation under consolidated application.	133	129	129
D. Percentage of LEAs receiving Part B allocation under consolidated application.	75%	76%	76%
E. Number of consolidated applications.	21	18	18
F. Average number of LEAs per consolidated application.	6	7	7

The state education agency does not provide any direct services, as noted in section XVIII of this plan.

XVIII. ADDITIONAL INFORMATION IF THE STATE EDUCATIONAL AGENCY PROVIDES DIRECT SERVICES

The state of South Dakota does not provide nor does it anticipate providing direct services to children with disabilities. SDCL Chapter 13-37 clearly mandates the local school district wherein the child resides with the responsibility of providing appropriate services.

XIX. INTERAGENCY AGREEMENTS

Federal Requirement(s)

Each State plan must set forth policies and procedures for developing and implementing interagency agreements between the State educational agency and all other State and local agencies that provide or pay for services required under this part for children with disabilities.

State Standards

SDCL 13-14-1. State board contracts with federal agencies -- receipt and expenditure of federal grants. The state board of education is hereby authorized to enter into contracts with any agency of the United States government for the purposes of education, to receive grants of federal funds for those purposes, and to expend such funds under such rules and regulations as the state board of education may establish.

SDCL 13-37-1.1. Rules governing special education. The state board of education may adopt rules, pursuant to chapter 1-26, governing the education of children in need as follows:

(1) Establishing standards for educational and noneducational programs, public and nonpublic, designed to meet the special needs of children in need of special education or special education and related services;

(2) Establishing appeal procedures for disputes involving the placement or program of a child in need;

(3) Ensuring the performance of such powers and duties as assigned to the board by this chapter and as elsewhere provided by law; and,

(4) Establishing the qualifications, training, certification, revocation of certification, appointment provision of services, reporting and monitoring of surrogate parents for children in need.

SDCL 13-37-1.2. Division as agency responsible for special education -- Regulatory and coordinating authority. The division of education of the department of education and cultural affairs is hereby designated as the state agency with responsibility for the education of children in need of special education or education and related services. In accordance with division shall have regulatory and coordinating program within the department of education department of social services or any such programs pertain to the special of special education or special

ARSD 24:05:14:01. Interagency agree education shall develop and implement the departments of social services, health, and human with court services for the purpose of of these agencies plays in providing or or related services for children with interagency agreements shall define the each agency for providing children with appropriate public education, establish interagency disputes among agencies agreement, and establish procedures agencies may initiate proceedings from agencies that are parties to the implement the provisions of the agreement

This section does not allow an agency to reduce assistance available to children with disabilities services that are also part of a free appropriate or to alter a child's with disabilities eligibility maternal and child health, or Title XIX, Medicaid Security Act.

State Plan

The Division of Education, Office of Special Education efforts to develop and implement interagency agreements and other state and local agencies as appropriate. continue during fiscal years 1996, 1997, 1998. The state statutes and rules give the state agency authority and implement interagency agreements for the purpose of financial responsibility of agencies to provide a free public education for children with disabilities; identify a mechanism for resolving interagency disputes; identify which LEAs can use to secure reimbursement from other agencies; and identify implementation provisions.

While continuing its efforts during this state plan period, the state agency assures that each interagency agreement will state:

1. A description of services available to children with disabilities in each agency and a definition of the financial responsibility of each agency to provide a free appropriate public education for children with disabilities; and,

2. A mechanism for resolving interagency disputes.

The state education agency in conjunction with other agencies will also identify procedures under which LEAs may initiate proceedings to secure reimbursement from other agencies.

Efforts of the state agency to address the items described above include the following:

1. Pursuant to P.L. 99-457, Part H, infants and toddlers with disabilities, an interagency agreement among the Department of Education, Health, Human Services, and Social Services has been developed. The agreement defines the financial responsibilities of each agency, provides for a coordinated child find effort, and contains dispute resolution procedures.

2. The South Dakota Youth and Family Alliance, with representative members from Health, Education, Social Services, and Human Services signed an interagency agreement to jointly fund regional facilitators. These individuals: (1) assist communities in planning, organizing, and conducting community needs assessments by identifying social, health, and educational services available to families of children, birth to 21 years of age, (2) facilitate the development and implementation of local interagency coordinating networks through technical assistance, (3) identify personnel needs for service providers who provide services to children and youth, birth to 21 years of age, and their families, and, (4) provide leadership and support to all cooperating agencies and individuals in the provision of services to children and youth, birth to 21 years of age, and their families.

3. The Department of Education and Social Services have entered into a memorandum of understanding in order to establish a framework for local education agencies (LEAs) to seek reimbursement for Medicaid eligible children. This has resulted in changes in the Medicaid state plan and social services administrative rules. These changes designate LEAs as service providers and provides reimbursement for allowable medical services, including evaluations.

4. An interagency agreement between Head Start, Education, and LEAs has been developed in order to: (1) assure that children in need of special education or special education and related services receive appropriate services for which they are eligible, and (2) assure quality programs and maximize services through the joint utilization of resources.

5. Interagency agreements have been developed between the Division of Education and the schools for the Deaf and Visually Impaired for the purposes of planning and sharing of resources in program implementation.

6. A cooperative agreement has been developed between the Department of Education, Department of Corrections, and East Dakota Educational Cooperative for the purpose of addressing the special education needs of inmates in correctional facilities.

Copies of all the agreements addressed in this part are contained in Appendix F, "Interagency Agreements", of this plan.

XX. PERSONNEL STANDARDS

Federal Requirement(s)

CFR 300.153(b)(1) requires that each State plan include policies and procedures relating to the establishment and maintenance of personnel standards adequate to ensure that personnel necessary to carry out the purpose of Part B of the Individual with Disabilities Education Act (IDEA) are appropriately and adequately prepared and trained.

State Standards

As a component of the State's comprehensive system of personnel development, the Administrative Rules of South Dakota (ARSD), specifically chapter 24:05:16, provide for the state-wide leadership required to meet all Federal provisions contained in CFR 300.153 (Personnel Standards). South Dakota rules with respect to personnel standards are contained in ARSD 24:05:16:02 and 24:05:16:17-18.

ARSD 24:05:16:02. Definitions. The following definitions apply to this chapter (i.e., ARSD 24:05:16 inclusive) only:

(1) "Appropriate professional requirements," means entry level requirements that:

  (a) Are based on the highest requirements in the state applicable to the profession or discipline in which a person is providing special education or related services; and,

  (b) Establish suitable qualifications for personnel providing special education and related services under this part to children and youth with disabilities who are served by state, local, and private agencies.

(2) "Highest requirements in the state applicable to a specific profession or discipline," means the highest entry-level academic degree needed for any state approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) "Profession or discipline," means a specific occupational category that:

(a) Provides special education and related services to children with disabilities under this part;

(b) Has been established or designated by the state; and

(c) Has a required scope of responsibility and degree of supervision.

(4) "Qualified" means that a person, in accordance with the provisions contained in 34 CFR 300.153, has met State educational agency approved or recognized certification, licensing, registration or other comparable requirements for the profession or discipline in which the person is providing special education or related services.

The legislative of the State of South Dakota either: (1) enacts specific legislation, or (2) authorizes designated executive agencies (e.g., the division of education, the state board of medical and osteopathic examiners) to promulgate administrative rules in order to establish the entry level standards for employment in a specific profession or discipline required for the provision of special education and related services. These state approved or recognized certification, licensing, registration, or other comparable requirements authorized or enacted by the South Dakota legislature are:

ARSD 24:05:16:16. Personnel standards. In order to ensure that all personnel necessary to carry out the purpose of Part B of the Individuals with Disabilities Education Act are appropriately and adequately prepared and trained, the state of South Dakota shall determine that all personnel providing special education and related services perform these functions under state approved or recognized certification, licensure or other comparable requirements which apply to the area in which the person is providing instruction or other service.

ARSD 24:05:16:17. Professional standards review. Prior to August of each year, the division of education shall review the appropriate professional requirements in the state necessary for the provision of special education or special education and related services. This professional standards review includes the standards of the division of education, the division of vocational rehabilitation, the state board of medical and osteopathic examiners, the state board of examiners of psychologists, the state board of optometry and any other body responsible for licensure or certification. In conducting this review, the division of education must:

(1) Determine the highest standards applicable to each profession or discipline;

(2) Identify those professions or disciplines for which the highest requirements of the state do apply;

(3) Identify those professions or disciplines for which the highest personnel standards of the state do not apply; and,

(4) For those professions or disciplines for which the highest requirements of the state do not apply, the division of education must detail steps the state is taking to require the retraining or hiring of personnel that meet the appropriate professional requirements in the state.

The results of the review conducted in accordance with the provisions of ARSD 24:05:16:17 shall be described in a report prepared for and submitted to the comprehensive system of personnel development advisory committee. Each annual report and necessary supporting documentation shall be maintained in the files of the division of education. Furthermore, each report shall be incorporated in the appropriate State plan for the Individuals with Disabilities Education Act, Part B submitted to the U.S. Department of Education on a triennial basis.

ARSD 24:05:21:01. School district must file comprehensive plan - contents. Each school district must have a current comprehensive plan on file with the state's office of special education. Districts shall update comprehensive plans every three years from filing and recertify their content annually.

Comprehensive plans shall establish compliance with this article and the Individuals with Disabilities Education Act, Part B as amended, and shall include the following:

(1) Full program services goals and procedures, including a timetable for accomplishing the goals and description of the kind and number of facilities, personnel, and services necessary to meet the goals;

(2) Ongoing child identification procedures;

(3) Referral, evaluation and placement procedures;

(4) Procedures for the development and annual review of the individual educational program for each child;

(5) Procedures for least restrictive environment;

(6) Policies and procedures on confidentiality of information;

(7) Procedural safeguards, to include:

    (a) Opportunity to examine records;

    (b) Independent educational evaluation;

    (c) Prior notice and parent consent;

    (d) Impartial due process hearing;

    (e) Surrogate parent procedures;

    (f) Protection in evaluation procedures; and,

    (g) Procedures for evaluating specific learning disabilities.

(8) Procedures for private school placement;

(9) Procedures for voluntary enrollment in nonpublic schools;

(10) Procedures for parent involvement in meeting the full program services goals of the district;

(11) Staff development procedures for the implementation and use of the comprehensive system of personnel development established by the division of education;

(12) Procedures for the employment of special education and related services personnel who have the endorsements as required in section 24:02:03:21 or 24:02:03:21:01, and who meet the requirements of 24:05:16:01; and,

(13) Policy on the provision of facilities, materials, and equipment used for special education being comparable to those used in regular education.

ARSD 24:05:23:01. Educational evaluator. An educational evaluator must possess a valid teaching certificate and must have training in individual and group tests to be administered.

ARSD 24:05:23:02. Psychological evaluator. A psychological evaluator must be a school psychologist certified by the division of education or a school psychological examiner certified by the division of education. A school psychological examiner's report must be co-signed by a certified school psychologist.

ARSD 24:05:23:03. Psychiatric evaluator. A psychiatric evaluator must be a psychiatrist licensed by the state board of medical and osteopathic examiners.

ARSD 24:05:23:04. Language, speech or hearing evaluator. A language, speech, or hearing evaluator must have a valid South Dakota certificate as a speech and language clinician.

ARSD 24:05:23:05. Audiological evaluator. An audiological evaluator must have a valid South Dakota certificate as a school audiologist.

ARSD 24:05:23:06. Medical evaluator. A medical evaluator must be licensed by the state board of medical and osteopathic examiners.

ARSD 24:05:23:07. Occupational therapy evaluator. An occupational therapy evaluator must be licensed by the state board of medical and osteopathic examiners.

ARSD 24:05:23:08. Physical therapy evaluator. A physical therapy evaluator must be licensed by the state board of medical and osteopathic examiners.

ARSD 24:05:23:09. Vision evaluators. A vision evaluator must be an ophthalmologist licensed by the state board of medical and osteopathic examiners or an optometrist licensed by the state board of optometry.

ARSD 24:02:03:01. Definition of terms.

(2) "Approved," approved for teacher education by the division of education for South Dakota programs and institutions or approved for teacher education by the state educational agency where the programs or institutions are located.

ARSD 24:02:03:20. Requirements for counselor certificate endorsement. The requirements for the counselor's certificate endorsement are as follows:

(1) A bachelor's degree from an accredited four-year college or university; and,

(2) The completion of one of the following:

(a) Elementary or secondary teacher certification and completion of an approved master's degree in school guidance and counseling; or,

(b) An approved master's degree in school guidance and counseling including 500 clock hours of internship in a school under the supervision of a certified counselor and counselor educator.

ARSD 24:02:03:21. Requirements for teacher of special education certificate endorsement. The requirements for the teacher of special education endorsement are:

(1) A bachelor's degree from an accredited college or university; and,

(2) The completion of an approved program in special education at an accredited college or university; or,

(3) Elementary or secondary teacher certification and completion of an approved program in special education.

ARSD 24:02:03:21.02. Requirements for early childhood special education teacher endorsement. The requirements for the early childhood special education teacher endorsement are:

(1) A bachelor's degree from an accredited college or university;

(2) The completion of an approved program and certification/endorsement in at least one of the following areas: elementary education with a nursery school endorsement, nursery school with a limited certificate, special education, elementary teacher with a special education endorsement, secondary teacher with a special education endorsement, and speech and hearing clinician certificate; and,

(3) The completion of an endorsement offered by an accredited college or university which meets the requirements contained in 24:19:02.01:12.

ARSD 24:02:03:22. Requirements for school speech and hearing clinician certificate endorsement. The requirements for the school speech and hearing clinician certificate endorsement are as follows:

(1) A bachelor's degree from an accredited college or university; and,

(2) The completion of an approved program in speech and hearing at an accredited college or university.

ARSD 24:02:03:23. Requirements for school psychologist certificate endorsement. The requirement for the school psychologist's certificate endorsement is the completion of one of the following:

(1) Completion of an approved graduate program for school psychologists at a college or university; or,

(2) Certification as a school psychologist by the National Association of School Psychologists.

ARSD 24:02:03:24. Requirements for school psychological examiner certificate endorsement. The requirements for the school psychological examiner's certificate endorsement are as follows:

(1) A master's degree with a concentration of coursework that is essentially psychological in nature; and,

(2) A minimum of 30 semester hours of undergraduate or graduate coursework, including at least one course in each of the following: individual psychological evaluation, practicum in individual psychological evaluation, group testing, the exceptional child, and

educational statistics, and a minimum of 16 semester hours of coursework from 5 or more of the following areas: general psychology; abnormal psychology; child, adolescent, or developmental psychology; educational psychology; principles and practices of guidance programs; elementary guidance; counseling methods or techniques.

ARSD 24:02:03:28. Requirements for special education director endorsement. The requirements for the special education director endorsement are as follows:

(1) An elementary or secondary teacher certificate with an endorsement in special education;

(2) Three years of teaching experience on an elementary or secondary teaching certificate, one year of which was in teaching special education. A year of experience in which working with special education students was the primary responsibility of the position may be accepted in lieu of the special education teaching requirement; and,

(3) The completion of an approved program for special education director at an accredited college or university and which meets the requirements contained in 24:19:02.01:15.

ARSD 24:02:03:31. Requirements for school audiologist certificate endorsement. The requirements for the school audiologist certificate endorsement are as follows:

(1) A master's degree; and,

(2) The completion of an approved program for school audiologists at a college or university or American Speech and Hearing Association certification in audiology.

SDCL 36-26-14. Qualifications of certified social worker. The board shall issue a licensure as a "certified social worker" to an applicant who:

(1) Has a doctorate or master's degree from a school of social work accredited by the Council of Social Work Education;

educational statistics, and a minimum of 16 semester hours of coursework from 5 or more of the following areas: general psychology; abnormal psychology; child, adolescent, or developmental psychology; educational psychology; principles and practices of guidance programs; elementary guidance; counseling methods or techniques.

ARSD 24:02:03:28. Requirements for special education director endorsement. The requirements for the special education director endorsement are as follows:

(1) An elementary or secondary teacher certificate with an endorsement in special education;

(2) Three years of teaching experience on an elementary or secondary teaching certificate, one year of which was in teaching special education. A year of experience in which working with special education students was the primary responsibility of the position may be accepted in lieu of the special education teaching requirement; and,

(3) The completion of an approved program for special education director at an accredited college or university and which meets the requirements contained in 24:19:02:01.15.

ARSD 24:02:03:31. Requirements for school audiologist certificate endorsement. The requirements for the school audiologist certificate endorsement are as follows:

(1) A master's degree; and,

(2) The completion of an approved program for school audiologists at a college or university or American Speech and Hearing Association certification in audiology.

SDCL 36-26-14. Qualifications of certified social worker. The board shall issue a licensure as a "certified social worker" to an applicant who:

(1) Has a doctorate or master's degree from a school of social work accredited by the Council of Social Work Education;

(2) Has passed an examination prepared by the board for this purpose.

SDCL 36-26-15. Qualifications for social worker's license. The board shall issue a license as a "social worker" to an applicant who:

(1) Has a baccalaureate degree in social work or social welfare program accredited by the Council on Social Work Education or a baccalaureate degree in another field, two years' experience in a social work capacity, and completion of courses equivalent to a social work or social welfare program approved by the board;

(2) Has passed an examination prepared by the board for this purpose.

SDCL 36-27A-12. Qualifications for license (Psychologist). The board of examiners of psychologists shall issue a license as a psychologist to an applicant who:

(1) Has a doctoral degree from a regionally accredited university or college in a program in psychology;

(2) Has passed an examination specified by the board for this purpose; and,

(3) Has had a supervised psychological internship amounting to not less than one thousand eight hundred hours in duration over a period of not more than two consecutive calendar years and one year of post-doctorate psychological experience.

> (The nature of an acceptable supervised psychological internship shall be specified by the board in rules promulgated pursuant to chapter 1-26.)

SDCL 36-37A-2. Exempt persons. The provisions of this chapter do not apply to the following persons: (Statute pertains to chapter 36-27A, Psychologists):

(6) School psychologist and school psychological examiners certified by the division of education practicing and functioning within the scope of their employment if they

use the title "certified school psychologist" or "school psychological examiner".

SDCL 36-10-27. Application for license - Fee - Evidence of qualifications (Physical Therapist). A person desiring to practice physical therapy in South Dakota shall file a written application with the board of examiners on forms provided by the board together with a fee of forty dollars. The applicant shall present evidence satisfactory to the board that he is of good moral character and evidence as required by the board of qualifications as follows:

(1) That he is a high school graduate or has the educational equivalency thereof as determined by the board.

(2) That such person has completed a formal course of study in the science of physical therapy approved by the board.

(3) If application is made for licensure based upon reciprocity, such application shall comply with the provisions of §36-10-31 and 36-10-32.

SDCL 36-31-6. Application for licensure - Requirements (Occupational Therapist). Any applicant applying for a licensure as an occupational therapist or as an occupational therapy assistant shall file a written application provided by the board, showing to the satisfaction of the board that he meets the following requirements.

(1) Residence: Applicant need not be a resident of the state;

(2) Character: Applicant shall be of good moral character;

(3) Education: Applicant shall present evidence satisfactory to the board of having successfully completed the academic requirements of an educational program in occupational therapy recognized by the board:

  (a) The occupational therapy educational program shall be accredited by the Committee on Allied Health Education & Accreditation/American Medical Association in collaboration with the American Occupational Therapy Association;

    (b) The occupational therapy assistant educational program shall be approved by the American Occupational Therapy Associate.

(4) Experience: Applicant shall submit to the board evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where he met the academic requirements or by the nationally recognized professional association;

    (a) For an occupational therapist, a minimum of six months of supervised fieldwork experience is require;

    (b) For an occupational therapy assistant, a minimum of two months of supervised fieldwork experience is required.

(5) Examination: An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall pass an examination approved by the board upon recommendation by the occupational therapy committee.

SDCL 36-4-11. Application for license - Qualifications of licensee - Examination - educational requirements. Any person desiring to engage in the practice of medicine or osteopathy, surgery, or obstetrics in any of their branches in this state shall make application to the board of medical and osteopathic examiners for a license. Such applications shall contain, and be accompanied by, such information as the board may by regulation require. Such license shall be granted to any applicant who shall give satisfactory proof of being at least eighteen years of age, of good moral character, a citizen of the United States or a person who has declared his intention to become a citizen upon the following conditions: the applicant shall pass an examination in those subjects determined by the board to be necessary to establish medical competence, and in addition thereto shall present evidence of having graduated and received a diploma from an approved medical or osteopathic college, approved by the board, such diploma to be submitted to the board for inspection and verification. If such diploma is from a medical or osteopathic college outside the United States, the board of examiners may require such further proof of competence as its rules may require. Such applicant shall also present evidence satisfactory to the board that he has successfully completed a program as an intern or resident, or such equivalent service as may be approved by the board, in a hospital approved by the board, for such time as the board may by regulation legally provide.

State Plan

The South Dakota division of education, office of special education has established and maintains standards to ensure that the personnel necessary to carry out the purpose of Part B of the Individuals with Disabilities Education Act are appropriately and adequately prepared and trained. The policies and procedures established and systematically administered by the state in conformance with the requirements of 300.153 are as follows:

(1) Pursuant to ARSD 24:05:16:16, the state division of education has established and maintains certification and licensure requirements (as detailed in the previous section of this chapter, State Standards) for professionals providing special education and related services. For those professions and disciplines necessary for the provision of special education and related services and in which certification, licensure, registration, or other comparable requirements are granted by a legislative enactment or authorized and administered by a state agency other than the division of education (e.g., social worker, psychiatric evaluator), the division of education, upon an annual review, considers these requirements as the entry-level standards for such personnel. (Refer to the previous section of this chapter, State Standards, for a review of all professions and disciplines necessary for special education and related services.

(2) ARSD 24:05:16:17 requires the division of education to undertake a review of professional standards prior to August of each year. In conformance with ARSD 24:05:16:17, office of special education staff annually collect updated personnel standards data from the various units of the division of education, as well as the division of vocational rehabilitation, the state board of medical and osteopathic examiners, the state board of examiners of psychologists, the state board of optometry, and any other body responsible for licensure or

certification. In conducting a review of this data for the purposes of identifying the highest requirements in the state, the requirements and all state statutes and the rules of all state agencies applicable to serving children with disabilities are considered.

(3) Based upon the office of special education's annual (pre-August) review of personnel data, a determination is made as to the highest standard applicable to each profession or discipline necessary for the provision of special education and related services. Pursuant to ARSD 24:05:16:17, the office of special education details in an annual personnel standards report:

(a) Those professions or disciplines for which the highest requirements of the state do apply;

(b) Those professions or disciplines for which the highest personnel standards of the state do not apply; and

(c) For those professions and disciplines for which the highest requirements of the state do not apply, the steps the state is taking to require the retraining or hiring of personnel that meet the appropriate professional requirements in the state.

(4) The most recent state division of education review for determining the status of personnel standards in the state was conducted in August of 1993 (and re-reviewed in March of 1994 in anticipation of this State plan submission). This review is administered by the office of special education each August; the 1993 review (and March 1994 re-review of personnel standards (detailed below) found no discrepancies in the highest requirements for entry into each profession or discipline necessary for the provision of special education and related services.

Discipline	Division of Education Certification	Licensure	Discrepancy
1. Special Education Teacher	Yes	No	None
2. Speech/Language Therapist	Yes	No	None
3. Audiologist	Yes	No	None

ol Psychologist	Yes	*No	None
pational Therapist	No	Yes	None
ical Therapist	No	Yes	None
selor	Yes	No	None
al Worker	No	Yes	None

school psychologist is considered as a specific occupational category rasted to clinical psychologist.

cal (inclusive of ysicians, psychiatrists, d ophthalmologists)	No	Yes	None

is information, contained in the state's annual personnel andards report, is on file in the division of education, office of ecial education and is available to the public.

nsistent with the documentation provided above, the South Dakota vision of education, in identifying the highest requirements in e state, considers all requirements and all state statutes and the les of all state agencies applicable to serving children and youth th disabilities.

(5) Although no discrepancy in personnel standards currently exists within the state, the division of education does have in place procedures to identify and to address such discrepancies. All personnel data available to the division of education, office of special education, is updated annually and is available -- prior to July 1st of any given year -- to state special education staff for analysis and a determination of the status of personnel standards for each profession or discipline; including standards for temporary or emergency certification.

In the event that a discrepancy is found between existing division of education standards and any other state standards, the highest entry-level standard shall be determined by the office of special education. The Director of Special Education, with the approval of the Secretary of Education and Cultural Affairs, shall develop a detailed plan, with appropriate steps and timelines, to ensure that all personnel in the profession or discipline in which the discrepancy exists will meet the highest standards (as determined through the office of special education's annual review). In developing and implementing this detailed plan, the Director of Special Education shall employ all necessary preservice and inservice options available through the state's comprehensive system of personnel development. In addition, the Director of Special Education shall notify all public agencies and, individually, the personnel affected by the discrepancy. This communication shall be accomplished through formal correspondence, as well as ongoing announcements in state-wide publications for professionals in special education and related services. Such communication shall: (a) identify the discrepancy in personnel standards which exists, (b) detail the federal and state requirements with respect to personnel standards, (c) describe the standards which must met and the training options available as part of the CSPD for meeting these requirements, and, (d) identify the timelines established state-wide for meeting the highest entry-level requirement for all personnel in the profession or discipline in question.

State rules (ARSD 24:02:02:02.02) prescribe both the timelines and the training content required of personnel employed under temporary or emergency certification to assure that such personnel meet the highest entry-level requirements of a specific profession or discipline. In addition to this information being available to the public through state rules, annual announcements from the division of education's office of school standards, and general correspondence, the state informs both the employing school district and the employee serving under an authority to act (i.e., emergency certification) of the steps which must be taken by the employee to meet full state certification/ licensure standards for the profession or discipline in which the individual is providing special education or related services.

The specific ARSD standards which address emergency or temporary certification are 24:02:02:02:01 (Application for one-year limited certificate) and 24:02:02:02.02 (Application for authority to act). Specifically, these items state:

24:02:02:02.01 Application for one year limited certificate. Applications for one year limited certificate shall be made on a form provided by the division of education. A one year limited certificate may be issued at the request of the school administrator to provide emergency temporary certification for a person who meets the following requirements:

(1) Has at least a bachelor's degree with a major in a certified subject area and is pursuing alternative certification under 24:02:02:01.05.

(2) Has a specialized vocational trade or industry skill with sufficient years of experience; or,

(3) Has a specialized non-vocational skill and is not eligible for a five year certificate.

24:02:02:02:02 Application for authority to act. An authority to act, valid for one year or less, may be issued at the request of a school administrator to provide temporary certification for a person who has a certificate, but is not fully qualified for the assignment. The application shall be made on a form provided by the division of education.

An authority to act may not be extended unless the person for whom it was granted has completed the coursework agreed upon in the application.

Consistent with these regulatory provisions, temporary or emergency certification can only be approved for special education personnel who hold the bachelor's degree. In the state of South Dakota, the bachelor's degree is the highest entry-level academic degree requirement for the special education and related services personnel (i.e., communications disorders) for whom emergency or temporary certification may be granted under the provisions of 24:02:02:02.01 and 24:02:02:02:02. Therefore, the highest entry-level academic degree (i.e., a bachelor's degree) is required for both emergency/temporary certification as well as for full certification.

(6) In addition to the annual review and determination of the status of personnel standards conducted by the office of special education staff (as described above), the state special education staff incorporates several other, complementary, analyses to determine that South Dakota's

standards for a profession or discipline, including standards for temporary or emergency certification. These components include the state's comprehensive compliance monitoring system (conducted annually by special education staff), the annual review of personnel information contained in the district IDEA-B applications and comprehensive plans as contained in ARSD 24:05:21:01, and annually review the certified/licensed professionals, including authorities to act (i.e., emergency certification authorizations), with the office of school standards within the division of education.

XXI. TRANSITION FROM PART H TO PART B

Federal Requirement(s)

Each State plan must set forth policies and procedures relating to the smooth transition for those individuals participating in the early intervention program under Part H of the Act who will participate in preschool programs assisted under this part, including a method of ensuring that when a child turns age 3 an IEP, or, if consistent with sections 614(a)(5) and 677(d) of the Act, an individualized family service plan, has been developed and implemented by the child's third birthday.

State Standards

The state administrative rule for implementing this requirement is as follows:

ARSD 24:05:27:21. Transition to preschool program. Each local school district shall develop policies and procedures for the transition of children participating in the early intervention program under Part H of the Individuals with Disabilities Education Act (IDEA) as in effect on November 13, 1992, who are eligible for participation in preschool programs under Part B of IDEA.

Each district's policies and procedures must include the following:

(1) A description of how the families will be included in the transitional plans;

(2) Procedures to be used by the district for notifying the local network in which the child resides of the need for transitional planning;

(3) Procedures for convening, with the approval of the family, a conference between the network, family, and district;

(4) A requirement for convening the conference at least 90 days before the child is eligible for the preschool program under Part B of Individual with Disabilities Education Act as in effect on November 13, 1992; and,

(5) Procedures for reviewing a child's program options for the period beginning with the day a child turns three and running

through the remainder of the school year including the development of an individual education program consistent with this article.

The district shall provide the family with information on the eligibility and evaluation requirements under Part B of Individual with Disabilities Education Act as in effect on November 13, 1992, including the parents' and district's rights regarding procedural safeguards.

State Plan

As noted above, in ARSD 24:05:27:21, each local school district is required to develop policies and procedures for the smooth transition of children in the Part H program to the Part B program. This is accomplished through the filing of district comprehensive plans which are approved and monitored for implementation by the Office of Special Education. In addition, the South Dakota Department of Education and Cultural Affairs is the lead agency for the Part H program which further insures program coordination with Part B of IDEA.